He Purapura Ora, he Māra Tipu

From Redress to Puretumu Torowhānui

VOLUME ONE
DECEMBER 2021

Abuse in Care
Royal Commission of Inquiry

Presented to the Governor-General by the Royal Commission of Inquiry into
Historical Abuse in State Care and in the Care of Faith-based Institutions

ISBN 978-0-473-60727-2

He karakia

Hei kurupounamu ki te ao

E aku whare tiketike, e aku manu huia, e ngā manutaki, e aku manu taiko, tēnei koutou ka tīkina atu e mātou hei hahu ake i te mahara, hei whakaoho i te wairua, hei kaiwhakaawe i te hinengaro, hei kaitīkaro manawa! E taku ngakau kia tau, e aku manako nui kia hiwa ra. Tēnā ra mātou e Rongo whakatāirihia ki te rangi, tūturu whakamaua kia tinā, tinā, hui e taiki e!

Me pēhea he kupu kia koutou kua puta i nga ākinga a nga tau kua hori, kua waia kē ki ngā hau pūkeri o te wā, kua hoea ngā wai tāpokopoko o te raru, kua hīkoi kē i te ara o te tika kua karo i te hē. Kua mōhio ki te pai, kua mātau ki te kino. Koutou kua rongo i te reo o te pani, kua kite i ngā pēhitanga o te rawakore. E te ha o te ora, ngā pae o te mātauranga, ngā pepeha o te hunga kua ngaro, te whirinakitanga mo te ngākau pouri, tēna e Rongo whakatāirihia ki te rangi, tūturu whakamaua kia tinā, tinā hui e tāiki e.

Kāti ra e koutou kua kūwhetia e te o tai koroheke, kua korowaitia ki nga raukura o tāi kūia, na koutou nei i tauira te oranga, kia tū mai ko te mauri tangata. Tāwharautia ratou e Rongo, hei whetū mārama ki te ao. Hei mihi ki te mauri whenua, hei kurupounamu mauri Atua.

Kia tau te mauri, Kia ū te mauri, Kia mau te mauri.

A treasure to the world

Bearers of our highest regard, revered and noble holders of age and wisdom, stir our memories, arouse our spirits, inspire our minds, prise open our hearts. Give me comfort and yet let my ambitions soar. Rongo, purveyor of peace, raise us all to the highest of heights. Make us resolute.

What can we say, to you who have come through years of change, the storms of time, sailed through troubled seas, walked paths that were both straight and narrow, who have known good and bad times, who heard the voices of the destitute and seen poverty? Breath of life, keepers of knowledge, hope of the lost, haven to the bereft. Rongo, purveyor of peace, raise them to the highest of heights. Make them resolute.

And so, to you, who have aged with grace, and been refined by time itself, you who have epitomised life and the essence of humanity itself; Rongo, purveyor of peace, let them shine like stars in the firmament enlightening the world, a natural creation of a divine treasure.

The essence of life is the soul that finds solace, a heart that knows peace and a mindset to hold them both.

Waihoroi Paraone Hōterene

He mihi
Acknowledgements

E ngā mana ririki, e ngā kārangarangatanga maha, e ngā kāwai ariki puta noa i te motu, nei rā te mihi maioha. Tēnā koutou, tēnā koutou, tēnā koutou katoa.

The multitudes from humble flax roots to distinguished leaders across this land, we acknowledge you with great affection. Greetings one and all.

Harikoa ana mātou ki te whakaatu i He Purapura Ora, he Māra Tipu. Nā ō mātou pou tikanga i tuku mai te ingoa o tā mātou rīpoata – nā Waihoroi Hōterene rātou ko Moe Milne, ONZM, ko Paraone Gloyne me Dr Hana O'Regan. He mea huti i te whakataukī "he purapura ora, he māra tipu" i te mea e whakaahua ana i te whakaaro o tētahi purapura, ahakoa pea kua takahia, ā, kua riro tētahi wāhanga ōna, - he pitomata mutunga kore tonu tōna, hei tipu, hei whanake. Ka pērā hoki ngā purapura ora, ka pupuri i te mauri, ā, ka whanake, ka tipu ahakoa te pāmamae kua wheakohia e rātou. Ka whai wāhi hoki ngā tāngata katoa ki te kaupapa. E kōrero ana mō te kanorau – te tini o ngā purapura me ngā hiahia rau hei tautoko i tō rātou oranga. He mea tāpiri e mātou - Kia Torowhānui te Puretumu - ki te ingoa o te rīpoata, e tohu nei i te panonitanga mai i ngā tūkanga kore nei i eke ki te puretumu torowhānui.

We are pleased to present – He Purapura Ora, he Māra Tipu. The name of our report was given to us by our pou tikanga – Waihoroi Hōterene, Moe Milne, ONZM, Paraone Gloyne and Dr Hana O'Regan. They drew on the whakataukī "he purapura ora, he māra tipu" as it reflects the idea of a seedling that, despite being trampled upon and losing a part of itself, still has infinite potential to grow and generate. - Survivors similarly retain a life essence and ability to regenerate and grow despite the trauma that they have endured in their lives. The concept is also inclusive of all people. It speaks of diversity – of seeds coming in every shape and form and with a diversity of needs to support their oranga, or wellbeing. We added - From Redress to Puretumu Torowhānui - to our report's name, signaling transformation from inadequate processes to holistic redress.

E mihi ana ki ngā pou tikanga i ā rātou kōrero āwhina me te karakia, te waiata hoki, i tukuna mai ki te kōmihana hei tūāpapa mō tēnei rīpoata e hāngai ai ki ngā tikanga Māori me te whakaāhuru i ngā kaupapa o roto.

We are grateful for the advice we have received from our pou tikanga and for the karakia and waiata gifted to the commission that frame this interim report in a way that is consistent with tikanga Māori, while also ensuring the kaupapa discussed is held safe.

Ka whakaatu te rīpoata nei i te nui me te pānga o ngā tūkinotanga me te korenga e manaaki i te wā o te noho taurima. Hāngai ana te titiro ki tā te Karauna me ngā wāhi whakapono kore i tuku ki ngā purapura ora, ō rātou whānau me ngā tūhononga tautoko, puretumu torowhānui tika, i ngā tau maha.

This report recognises the scale and impact of abuse and neglect in care. It focuses on the failure over many years by State or faith-based institutions, to provide survivors, their whānau and support networks with effective puretumu torowhānui, holistic redress.

Me mātua panoni ētahi āhuatanga. He whānui ngā hītori me ngā horopaki o ngā purapura ora. Ka ahu mai te nuinga i ngā wāhanga o ngā hapori kāore i tino waimarie – pēnei i ngā tamariki, ngā rangatahi me ngā pakeke whakaraerae, ngā Māori, ngā uri o Te Moana-nui-a-Kiwa, ngā tamariki nō ngā whakatipuranga pōhara, te hunga Turi, te hunga hauā hoki, ngā wāhine me ngā kōtiro.

Transformative reform is urgently required. Survivors come from all backgrounds and situations. Many come from the most disadvantaged or marginalised segments of our community – including children, young people and adults at risk, Māori, Pacific, children from impoverished backgrounds, Deaf and disabled people and women and girls.

He whānui ā mātou tūtohi. He whānui ake i ētahi atu kaupapa puretumu kua whakatūngia ki tāwāhi. Me pēnei e ai ki ā mātou mahi e hoki ai te mana me te oranga ki ngā purapura ora i rongo i te tūkinotanga me te kore manaaki i te wā o te noho taurima i raro i te Karauna me ngā wāhi whakapono.

Our recommendations are far-reaching. They are more ambitious than any other redress system or scheme that has been established overseas. Our work to date tells us that this is necessary in order to restore the mana and oranga, or wellbeing of survivors who have suffered abuse and neglect in State or faith-based care.

E ngā purapura ora: i whakarongo mātou ki a koutou, ō koutou whānau, tūhononga hoki, ki ō koutou wheako me ngā pānga o ngā tūkinotanga me ngā kore manaaki i rangona, e rangona tonutia ana i te wā nei. Kua tuia ā koutou kōrero ki roto i tēnei rīpoata. E mihi ana i tō koutou kaha, māia, manawatītī hoki ki te tuari kōrero. Me i kore ake koutou, kua kore tēnei rīpoata. Me mihi hoki ki ngā purapura ora kāore anō kia kōrero mai. Waihoki, e mihi ana ki ngā purapura ora kua riro atu ki te pō.

To survivors: we have listened and heard from many of you who, often supported by your whānau and networks, have shared your experiences and discussed the profound impact the abuse and neglect in care you have suffered has and continues to have on your daily lives. We have woven your kōrero into this report. We thank you

for your courage, bravery and resilience in sharing your kōrero with us. Without you we could not have written this report. We acknowledge those survivors who have not been able to come forward. We also acknowledge those survivors who are no longer here to share their kōrero with us directly.

Me mihi hoki ki ngā mema o te rōpū arataki purapura ora, Kararaina Beckett koutou ko Jim Goodwin, ko Keith Wiffin me Gary Williams. Ki ngā mema hoki o Te Taumata – Prue Kapua koutou ko Sharon Hawke, ko Liz Mellish MNZM, i te tau o ā koutou kōrero, pātai hoki hei whanake i te rīpoata, hei whakawhenua hoki i te pae tawhiti i roto i te ao hurihuri nei.

We also acknowledge the mahi, or work, that the members of our survivor advisory group, Kararaina Beckett, Jim Goodwin, Keith Wiffin and Gary Williams, as well as the members of Te Taumata – Prue Kapua, Sharon Hawke and Liz Mellish MNZM contributed to the development of our report. We thank you for your careful and considered kōrero and pātai which greatly improved our report and ensured that our vision for the future is strongly grounded in reality.

Ka tuku a mātou whakaaro manaaki ki te whānau a Neville Baker, he mema o Te Taumata, kua riro atu rā; e te rangatira, haere atu rā.

We offer our heartfelt condolences to the whānau of the late Neville Baker, who was a member of Te Taumata and who recently passed away.

Kāti, ngā whakamānawatanga ki te hēkeretari me te hunga rōia i taunaki i te Royal Commision me ō rātou tirohanga whānui, pūkenga, wheako, paunga kaha hoki hei whakarite i te rīpoata nei.

Finally, we express our gratitude to the secretariat and counsel assisting the Royal Commission, who brought their diverse views, skills, experience and hard work to the preparation of this report.

Ki te pānui koe i tēnei, he haepapa nui kei runga i a koe kia mātua haumaru ngā tamariki, ngā rangatahi me ngā pakeke whakaraerae i Aotearoa, i ngā hē, ā, kia whiwhi atawhaitanga, ngākau aroha hoki e haumaru ai, e ora ai, e puāwai ai hoki rātou. Me rongo tō reo kia:

- utu ngā wāhi Karauna, ngā wāhi whakapono hoki i ō rātou hē
- whiwhi puretumu torowhānui tika
- whai kaupapa here tūmatanui a Aotearoa e hāngai ana ki te poipoi i te matatika, ki te whakaheke i ngā rerekētanga ā-hapori, ā-pūtea hoki me te whakarite tautoko tika mō ngā whānau, te whanake hoki i te kotahitanga ā-hapori.

All who read this report have a vital role in ensuring that our children, young people and adults at risk in Aotearoa New Zealand are safe from harm, and are treated with atawhai (kindness) and compassion, so that they are safe, well and thriving. Your voices are needed to ensure that:

- State and faith-based institutions are held to account for the wrongs that have been committed
- meaningful puretumu torowhānui, or holistic redress, is provided
- Aotearoa New Zealand has public policies in place aimed at fostering fairness, reducing socio-economic disparities, providing adequate support for whānau and improving social cohesion.

E akiaki nei mātou i a koutou ki te kōrero, e mōhio ai tātou, ngā kiriirarau o Aotearoa, he tika ngā mahi e mahia ana.

We encourage you to speak up so that together, we as citizens of Aotearoa New Zealand, can know the right steps are being taken to eliminate abuse in care.

Coral Shaw

Heamana
Chair

Sandra Alofivae

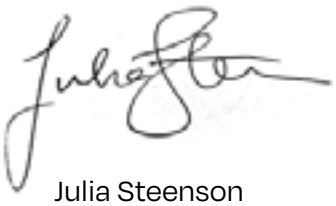
Kaikōmihana
Commissioner

Andrew Erueti

Kaikōmihana
Commissioner

Paul Gibson

Kaikōmihana
Commissioner



Julia Steenson

Kaikōmihana
Commissioner

VOLUME ONE

Rārangi take - Contents

Pānui whakatūpato

Ka nui tā mātou tiaki me te hāpai ake i te mana o ngā purapura ora i māia rawa atu nei ki te whāriki i ā rātou kōrero ki konei. Kei te mōhio mātou ka oho pea te mauri i ētahi wāhanga o ngā kōrero nei e pā ana ki te tūkino, te whakatūroro me te pāmamae, ā, tērā pea ka tākirikirihia ngā tauwharewarenga o te ngākau tangata i te kaha o te tumeke. Ahakoa kāore pea tēnei urupare e tau pai ki te wairua o te tangata, e pai ana te rongo i te pōuri. Heoi, mehemea ka whakataumaha tēnei i ētahi o tō whānau, me whakapā atu ki tō tākuta, ki tō ratonga hauora rānei.

Whakautetia ngā kōrero a ētahi, kia tau te mauri, tiakina te wairua, ā, kia māmā te ngākau.

Distressing content warning

We honour and uphold the dignity of survivors who have so bravely shared their stories here. We acknowledge that some content contains explicit descriptions of tūkino - abuse, harm and trauma - and may evoke strong negative emotional responses for readers. Although this response may be unpleasant and difficult to tolerate, it is also appropriate to feel upset. However, if you or someone in your close circle needs support, please contact your GP or healthcare provider.

Respect others' truths, breathe deeply, take care of your spirit and be gentle with your heart.

Whakarāpopototanga rīpoata
Executive summary

This report is about the struggle of many survivors of abuse in care to restore their lives, regain their mana and hold previous and current government of the day, State and faith-based institutions to account for the abuse survivors suffered. It's about the failures of those institutions to respond to the needs of survivors. This report also looks to the future, to what 'redress' should be available to survivors of abuse in care – that is, what is needed to put right the deep harm that has been done to individuals, their whānau and communities through abuse in care. We recognise the term 'redress' is unfamiliar to many survivors, and some consider it does not capture what is needed. Some have said the term reminds them of the abuse they suffered. In our report, we have chosen to use the reo Māori terms 'puretumu torowhānui' , or holisitc redress, as it refers to a wider range of things that redress should include – things that can restore the lives, oranga or wellbeing and mana of survivors.

Despite harrowing accounts and often obvious signs of physical, emotional or psychological damage, many survivors found their efforts to obtain redress from State and faith-based institutions rejected time and again. For many survivors, their experiences were downplayed, disbelieved or dismissed. Their claims sat in in-trays for months or years. They struggled to get their personal records, and when they did, some were so heavily redacted they could barely make sense of them. A determined few continued their struggle in the courts, only to run into legal brick walls, the most overwhelming being accident compensation legislation and limitation defences.

Eventually, the Crown opted for a two-pronged approach: on the one hand, offering modest monetary payments and qualified apologies through separate, inconsistent claims processes run by the same departments and ministries responsible for the abuse; and on the other, strongly defending any claims taken to court. The Crown's goal was not only to win these individual cases, but also to discourage other claimants, and limit its liability for abuse in care. We found in some cases; the Crown did not behave at all like the model litigant it said it would be.[1] It lost sight of the people behind the claims who had been abused while in the State's care. Even when

it knew the substance of a claim to be true, it used aggressive tactics or hid behind technical defences, and after a series of losses by survivors, the reality became clear: survivors' only real option lay in a one-sided offer from a government agency that they could either take or leave.

Faith-based institutions also gave their own responses to reports of abuse and requests for redress, while relying on many of the same legal defences. Like government agencies, they generally offered – after many delays or much questioning of survivors' accounts – a modest payment and a qualified apology and looked no further into the matter. Processes were intimidating and often relied on legal representation or determined survivors for access to entitlements. Some perpetrators, already known or convicted abusers, were moved elsewhere, sometimes in secret, only to go on to abuse others. Support to rebuild broken lives was limited or non-existent. Few attempts were made to find survivors from known abusive environments.

Neither State nor faith-based institutions were willing to accept the widespread abuse that could have easily been uncovered. The scale of the abuse was simply too horrific to acknowledge, the financial ramifications too huge to contemplate. So they told themselves these cases were not symptomatic of any wider problem.

Society was also in denial, despite calls over the decades for an inquiry into abuse in care – abuse that was going on in hospitals, boarding schools, orphanages, foster and other care homes, homes for unmarried mothers and churches. The denial was fostered by the common and negative social attitudes of the time about race, gender, disability, mental health and the place of children, Deaf and disabled people. Many of those in care came from already disadvantaged or marginalised parts of the community.

A disproportionate number were Māori, the legacy of generations of monocultural and racist government policies, poverty and the harsh sentencing of children's courts, before which Māori appeared in large numbers. The children of Pacific migrants, socially and economically disadvantaged and targeted by racial profiling, were also amongst those in care. Deaf and disabled survivors and those with mental illness were systematically separated from society and placed out of sight in institutions or other full-time care settings, a result of ableist policies and beliefs.

These underlying attitudes and cultural factors are dealt with in the opening section of this report.

Many survivors suffered horrific physical and sexual violence, such as rape and violent treatment of children. There was psychological and emotional abuse, discrimination because of race or disability, isolation, improper use of medical

procedures as punishment. Much of this was criminal, and some of it was torture. Women and girls endured rape, forced examinations for sexually transmitted diseases and removal of their babies, and there are reports that some were sterilised without consent. Most suffered neglect of their basic need for stability, warmth and affection. Māori and Pacific children were deprived of knowledge of their whakapapa, connection to whānau and cultural identity. All of this took place in the institutions that held ultimate power over them. Survivors had also sustained serious neglect, including medical, educational and spiritual neglect. Deaf, disabled and mentally ill people were particularly likely to have suffered such neglect.

It is incomprehensible that human beings could behave like this towards another. What is just as baffling is how those in authority failed in their responses to survivors' requests for redress. It was clear survivors had been deeply harmed by their time in the institutions that were entrusted to care for them. How, in the face of this, could anyone not be shocked and stirred into action?

At the heart of our recommendations is the intention to provide a process by which survivors can address the tūkino, or abuse, harm and trauma, that has occurred to them, restore their mana and heal and grow in ways that allow them to achieve "utua kia ea" or restoration and balance. To do this we have proposed the establishment of a new puretumu, or holistic redress, scheme.

We have closely examined the current redress processes of the Ministry of Social Development, Oranga Tamariki, Ministry of Health, Ministry of Education, Anglican Church, Catholic Church and The Salvation Army. We found them to be completely inadequate in many ways. Findings about the different processes are detailed in Volume One Part Two of this report and in the case studies of individual experiences in Volume Two. Overall, we found that in most cases, the agencies and institutions:

- have developed processes without regard to te Tiriti o Waitangi and its principles, and in isolation from survivors
- do not recognise the mana of survivors or offer genuine support for survivors to heal their lives, or restore their mana and oranga
- do not include tikanga Māori or reflect te ao Māori concepts and values, including te mana tangata, whanaungatanga, or manaakitanga, in their processes
- designed processes to suit the institutions' own needs, not those of survivors, and as a result have added to survivors' harm and trauma
- take no account of Pacific peoples' values, or the importance of cultural restoration to many Pacific survivors, in their processes

- fail to consider the impact of abuse on survivors' whānau, hapū, iwi and hapori or communities
- are narrowly focused on settling individual claims and do not investigate or hold to account the individuals or organisations concerned or take measures to prevent further abuse
- offer only the most basic forms of wellbeing support
- take far too long, sometimes years, to come up with a settlement offer
- fail to offer meaningful financial payments
- fail to meaningfully acknowledge and apologise for the abuse, harm and trauma inflicted and suffered
- typically offer no more than a limited apology and some money, inadequate as each of these invariably is
- lack independence because the organisations tend to investigate themselves and control every part of the process and outcome
- require evidence of abuse, often disbelieve survivors, and do not adequately support survivors through their processes
- offer redress that is inconsistent with other offers they have made, and also with offers other institutions have made
- rarely provide survivors with adequate information on how to make a claim or how they arrive at their decisions
- have processes that do not meet the needs of many Deaf and disabled survivors for information and support that enable them to seek redress.

By contrast, we recommend a new puretumu torowhānui scheme be established that:

- is founded on a series of principles, values and concepts founded in te ao Māori
- provides for a process with an independent, government-funded inclusive Māori Collective leading the design of the puretumu scheme, working together with survivors, a government-funded group representing survivors described as the Purapura Ora Collective and with others
- is designed and run in a way that gives effect to te Tiriti o Waitangi
- is established by an Act of Parliament and funded by the Crown, but with contributions from participating institutions

- is independent of the institutions where the abuse took place
- requires the wind down of current State claims processes and for all government agencies to join and encourages faith-based institutions to join within a reasonable time, although the latter will, if necessary, be required to join
- provides for financial payments that give a meaningful recognition of the harm and trauma suffered
- facilitates oranga services tailored to individual survivors' needs (and, where appropriate, those of their whānau), including help with health, education, employment, secure housing, building and maintaining healthy relationships, counselling and social and cultural connections
- facilitates meaningful apologies
- provides a safe, supportive environment for survivors to interact with the puretumu torowhānui scheme, talk about their abuse and make a claim for puretumu torowhānui, and that is open to all survivors, including those who have been through previous processes and those covered by accident compensation legislation
- allows family members to continue a claim on behalf of a survivor who dies
- gives priority to elderly or seriously ill survivors
- covers the full range of physical, sexual, emotional, psychological, racial and cultural abuse, along with neglect
- develops and makes public information about the types of support available, eligibility and assessment criteria, and timeframes for making decisions on a claim
- allows survivors to choose between making a puretumu torowhānui claim that takes into account abuse and its impact or simply the abuse only, which will have lower standards of proof than applies in the courts
- makes belief of a survivor's account the starting point for assessing a puretumu torowhānui claim
- involves survivors in deciding on the form and content of apologies and acknowledgments and choosing the nature and extent of the oranga services they may need.

This new approach will fit within a wider "puretumu torowhānui system" – a framework of services, laws and policies that have a role in providing different types of puretumu torowhānui. To make sure puretumu torowhānui is fair, effective and accessible, we recommend the new system include:

- an expansion of oranga and support services for survivors and their whānau
- training for those working with survivors
- establishment of a listening service
- development of processes for referring allegations of abuse or neglect to enforcement or other agencies
- better monitoring of, and reporting on, abuse and systemic issues
- memorials and other projects to honour survivors and remember abuse
- enactment of a right to be free from abuse in care, as well as of a duty to protect this right
- an exception to accident compensation legislation
- changes to laws relating to civil litigation
- a review of legal aid rates
- a new model litigant policy for the Crown
- improvements to the handling of survivors' requests for records, including as few redactions of survivors' records as possible
- a review of record-creation and record-keeping practices.

Importantly, we also recommend that there be public acknowledgement of, and apologies for, the abuse that occurred and the harm it caused, at a national and community level, including from the Governor-General, Prime Minister and leaders of faith-based institutions.

Our 95 recommendations are based on 15 weeks of public hearings, evaluations of hundreds of witness statements, a large number of public submissions, private sessions with hundreds of survivors, analysis of more than 150,000 documents, meetings with government agencies, discussions with the Scotland, Ireland, Australia and Canada redress organisations, hui and wānanga with experts and leaders from the Māori, Pacific and disabled communities, and policy, research and investigation work.

There is still much more to be done by our inquiry, but in presenting these recommendations at this stage in our work, we make the following point: survivors continue to suffer as they wait for puretumu, and many have died in the meantime. They should wait no more – the time for action is now.

WĀHANGA TUATAHI
PART ONE

Tūāpapa me te horopaki
Background and context

1.1 Whakatakinga - Introduction

This report is about "redress" – that is, about what Aotearoa New Zealand might do to put right the profound harm that has been done to individuals, whānau, and communities through abuse in care. In our report, we have made the choice to use the reo Māori term "puretumu torowhānui", or holistic redress, to reflect the unique Aotearoa New Zealand context in which these harms must be set right, and because some survivors felt that the term "redress" did not capture what was needed to put things right.

The abuse of children, young people and vulnerable adults in State or faith-based care in Aotearoa New Zealand since the 1950s has occurred on a scale larger than many can imagine. It has affected what could be hundreds of thousands of people.[2] The people who have been abused in care come from all backgrounds and situations. Many have come from already disadvantaged or marginalised segments of the community – particularly from Māori whānau, Pacific families, Deaf and disabled people, children from impoverished backgrounds, and women and girls. They were abused by people that should have been caring for them, and – particularly for those abused in faith-based care – held trust and respect from the community.

The abuse experienced includes physical violence, rape and sexual violation, psychological and emotional abuse, racial abuse, religious abuse, isolation, and improper use of medical procedures – including in some cases administration of electric shocks and painful injections of sedatives as punishment. It also includes neglect, including of basic physical, emotional, cultural, spiritual, educational and medical needs.

It has caused immeasurable harm to thousands of individual survivors, to their whānau and communities, and to Aotearoa as a whole. Despite the incredible resilience of survivors, the harm continues to affect lives to this day.

Survivors have told us that nothing can completely set right this harm. But puretumu

torowhānui is about taking meaningful steps towards this goal. We think the goal of puretumu torowhānui is best encapsulated by the Māori concept of te mana tangata – the respect and restoration of mana, power, dignity and standing and inherent value of those who have been affected.

Steps to achieve this will vary for different survivors, their whānau and communities. They might include an acknowledgement and apology for the abuse that occurred, either individually or as a public apology to all survivors; justice and accountability; tangible measures to make up for the tūkino, or abuse, harm and trauma, suffered, such as monetary payments and support, access to personal information, support for recovery and healing that address all aspects of a person's oranga, or wellbeing (for example through counselling and spiritual support), support for restoration of relationships, and connection or reconnection with whakapapa and whānau; and steps to ensure that abuse cannot occur again.

In this part of the report, we look at the context in which people were placed, and abused, in care, and the impact of that tūkino on them, their whānau and their communities, so that we may understand what needs to be put right. We will consider the experiences of all survivors, while acknowledging the particular experiences of Māori, Pacific peoples, Deaf and disabled people, those in faith-based care and State care, and women and girls.

We then look at principles and values that have guided our thinking about puretumu torowhānui. In particular we look at tikanga Māori and Pacific principles and concepts of harm and restoration, as well as concepts important to disabled people and their communities. These world views not only respond to the disproportionately large numbers of Māori and Pacific and disabled people in care, but also offer us useful frameworks, applicable to all communities, for understanding harm and how to respond to it. Finally, we look at the obligations to provide puretumu torowhānui, or holistic redress, and the particular expectations that survivors and others have about what this should look like.

1.2 Me mārama ki te tūkino
Understanding the tūkino

To understand the tūkino suffered, it must be viewed against the context in which people were placed in care. Children and vulnerable adults were placed in care for many reasons. Some entered care because their parents were unable to care for them or were abusive; some because they were born to an unmarried mother, or because of the death of a parent. In many cases parents were not supported to be able to look after their children or family members. Sometimes families placed a child or family member in care for religious or educational reasons, or because they trusted a particular individual such as a religious leader, or a school or institution, to provide care. Disabled children and disabled adults alike were often placed in residential or special care, because there was not enough support for them and their whānau in their homes, schools, workplaces and local communities, or because of the actual or perceived risk to themselves or others. Often those in care and their families had little power or resource to challenge the situation.

Children and vulnerable adults in the care of the State were placed in many different care settings, including boys' and girls' homes, youth justice facilities, foster placements, adoption placements, health camps; health and disability settings including both large psychiatric hospitals and community-based care, and police and court cells. Many children and vulnerable adults were also in the care of faith-based institutions. These institutions have always had an active presence in our communities, including Māori and Pacific communities, and have assumed responsibility for the welfare of children and vulnerable adults. Some survivors went through numerous care settings, both State and faith-based, and suffered abuse in more than one place.

Racist and ableist beliefs, the backdrop of colonisation and other broader social contexts, contributed to Māori, Pacific, Deaf and disabled people entering care. These also shaped their experiences both in care and of seeking puretumu torowhānui and the restoration of mana for tūkino suffered. Women and girls and those in

faith-based care also faced particular social factors that shaped their experiences of care. Understanding these factors help us to understand the particular types of tūkino suffered by survivors from those groups. Many survivors belong to more than one of these groups. For example, many Pacific survivors were in faith-based care, and disabled survivors may also be Māori or Pacific. Many of these survivors faced multiple layers of discrimination and tūkino in care. They also faced additional barriers in seeking puretumu for the tūkino suffered.

The focus on the particular experiences of these groups is not in any way meant to take away from the profound experiences of other survivors, who have also suffered devastating consequences from tūkino inflicted and suffered.

Te haerenga mō ngā Māori - The journey for Māori

New Zealand's history has been one of colonisation. Over many generations, the government, at times actively assisted by churches, pursued colonial and assimilationist policies aimed at breaking down Māori authority and social structures and asserting government control over Māori, their land and resources – the exact opposite of what was agreed between Māori and the Crown in te Tiriti o Waitangi in 1840.

For Māori, the undermining of whānau, hapū and iwi structures and networks was "not merely a result of colonisation, but an essential part of the process".[3] This colonial history, as well as ongoing structural racism, has caused high rates of poverty among Māori and contributed to a disproportionate number of Māori children and young people in care. The impact of this has continued through multiple generations and Māori are still over-represented in care today.

A 1986 report to the Minister of Social Welfare, Puao-te-ata-tu, found that New Zealand institutions – rooted in Pākehā values, systems, and viewpoints – had served to alienate Māori from their own lands and to break down traditional Māori society.[4] The history of colonisation was a "history of institutional decisions being made for, rather than by, Māori".[5] This applies to the way we have cared for children: the Waitangi Tribunal recently criticised the Crown for its failure to involve Māori in developing and implementing care systems for vulnerable children, saying "although these policies [implemented by the Crown] intrude into the most intimate aspects of whānau life, there is little evidence of Tiriti/Treaty partnership in their design or implementation".[6]

Other bodies, including the Children's Commissioner, Ombudsman, and others, have also commented on the way that impacts of colonisation, such as systemic racism, intergenerational harm, and disparities suffered by Māori, have affected the way tamariki are cared for.[7]

Dr Moana Jackson told us that the removal of indigenous children and their placement into State care is a common characteristic of colonising states:

> *"Families are disrupted to prevent the transmission of cultural values and identity from one generation to the next... the intention to take has been the same as in other countries, and dispossession is dispossession, even when it is carried out with an allegedly honourable intent or kind usage. Colonisation has always been genocidal, and the assumption of a power to take Māori children has been part of that destructive intent. The taking itself is an abuse."* [8]

The Waitangi Tribunal, in its Oranga Tamariki inquiry, found that te Tiriti guaranteed ongoing full authority of Māori over their kāinga and communities, encompassing a fundamental right "to live and organise as Māori"; and the right "to care for and raise the next generation".[9] Similarly, Dr Jackson described the exercise of mana or tino rangatiratanga as encompassing "absolute authority" to make decisions about, protect, care for, and support the advancement of Māori communities.[10]

The disproportionately high number of young Māori taken into care arose and persisted "in part due to the effects of alienation and dispossession",[11] and, according to the Tribunal, this amounted to a failure by the Crown to honour the guarantee of tino rangatiratanga:

> *"It is more than just a failure to honour or uphold, it is also a breach born of hostility to the promise itself. Since the 1850s, Crown policy has been dominated by efforts to assimilate Māori to the Pākehā way. This is perhaps the most fundamental and pervasive breach of te Tiriti/the Treaty and its principles."* [12]

As noted, over-representation of Māori in State care continues to this day. The Tribunal said this "level of encroachment by the Crown into the lives of whānau and tamariki is profoundly inconsistent with te Tiriti/the Treaty and its principles", and yet it continues:

> *"... in part due to assumptions by the Crown about its power and authority, and in part because the disparities and dependencies arising from the breach are rationalised as a basis for ongoing Crown control."* [13]

While the Tribunal has naturally focused on the government's role, churches have at times actively aided and participated in the colonisation of Māori, by advocating for and supporting the government to assert its authority over Māori communities, taking Māori land and promoting Christianity as a replacement for Māori belief systems. Over time many faith-based institutions became places of spiritual and pastoral refuge for many Māori. The Catholic and Anglican churches, for example, have many Māori members and have provided educational, social and pastoral support for Māori over many years. Yet it is clear too, that Māori have suffered tūkino while in the care of the churches, including in orphanages, schools and residences. Others have been abused by church officials providing pastoral care.

Many witnesses to our inquiry spoke about abuse in care as connected to and a consequence of colonisation in this country. Survivors have described how generations of their whānau have been affected by colonisation and racism, and in turn, poverty and environments where violence was sometimes common – resulting in tamariki being taken into care.

Dr Rawiri Waretini-Karena, a survivor and witness to this inquiry, explained the "intergenerational minefield" that Māori are born into due to the brutal taking of their land and resources and the impact of harmful legislative policy. This continues to devastate Māori cultural identity, language and heritage and has contributed to intergenerational trauma and hardship.[14]

Dr Waretini-Karena described his own pathway into care through looking back at four generations of his whānau. He explained how his grandfather was abused in school, and his father was beaten and traumatised in Social Welfare care. His father was subsequently violent towards him, resulting in him entering care:

> *"What he [his father] experienced he pretty much applied to his family … our home was very abusive, extreme violence, extreme childhood trauma … All issues and behaviours have whakapapa, they come from somewhere for some reason, these things didn't just manifest out of the land … for me, it was about looking at contributing factors to the environment that I was born into …*
>
> *It rippled into the next generation and rippled into the next generation … it doesn't make any excuses but what it does is contextualise where these things came from … I can look at anything from poverty and track its whakapapa back, drugs and alcohol and track its whakapapa back."*[15]

Others have spoken of racist and discriminatory attitudes and policies that contributed to large numbers of young Māori being placed in care, particularly as their contact with government authority increased in the post-war years.[16] The number of tamariki Māori entering care rose rapidly during that period, particularly between the 1960s and 1980s, resulting in seven per cent of Māori boys and two per cent of Māori girls living in State care.[17]

A number of factors contributed to this dramatic increase. These included growth in contact between Māori and government agencies beginning in the early 1940s, partly as a result of the rapid urbanisation of Māori and partly because government 'welfare' agencies began to extend their reach into rural Māori communities.[18] The Māori population was growing rapidly during this period and had a younger demographic profile than non-Māori.[19] To a large degree, urbanisation was fuelled by younger Māori escaping deprivation in their home communities and seeking new opportunities in towns and cities.[20]

This migration to urban areas made housing and employment problems worse for Māori, and at the same time made visible the racial, economic and social inequalities in Aotearoa New Zealand.[21] This affected the social attitudes of many Pākehā towards Māori. Officials in both urban and rural communities increasingly identified welfare issues among Māori. Explanations for these welfare problems included Pākehā racial prejudice, intolerance and ignorance of Māori custom, as well as poor employment opportunities, substandard housing, and the breakdown of traditional Māori structures and other impacts of colonisation.[22]

From the 1940s there was also a focus on "juvenile delinquency", a term covering a wide range of behaviour perceived as requiring control.[23] This focus particularly affected young Māori. Between 1940 and 1970, Māori were three times more likely than non-Māori to appear before Children's Courts.[24] Once before the court they also received harsher treatment; between 1966 and 1976, of those sentenced to two years in borstal (the harshest sentence available to the court) 59 per cent were Māori.[25]

Sir Kim Workman has described Police deliberately targeting groups of young Māori socialising in towns and cities and harassing them until one swore or stood up to them and was arrested.[26] In his evidence to us, Sir Kim reiterated his view that young Māori were often targeted and institutionalised for "comparatively minor offences" which often reflected cultural differences or deprivation rather than criminal activity.[27]

In his book Justice and Race, Dr Oliver Sutherland argued that the youth justice statistics "proved the deliberate, systematic and increasing oppression of children, particularly Māori children, by the State, and were an appalling indictment of so-called

"They've [the Crown] always believed in the superiority of Pākehā nuclear families. Our traditions and practices that valued whānau Māori were seen as inferior and not good for our tamariki."

justice in this society".[28] The figures "illustrated the depth of institutional racism and its impacts on those who were most defenceless".[29]

Throughout the twentieth century, an increasing number of Māori were also placed in psychiatric facilities.[30] Research commissioned by the Tribunal observed that Māori communities had typically viewed mental illness as reflecting a spiritual imbalance and likely cared for the mentally ill within the community.[31] In contrast, the government's approach to caring for mentally ill people through this period was to place them in institutions, separate from their community, as discussed further below.

By removing young Māori from their whānau and kāinga, and by placing them in State care, government agencies cut them from the systems of physical, emotional and spiritual support, and ultimately from their identities as Māori. Some experienced frequent changes of placement and lengthy periods in care. Being placed in care meant they lost contact and connection with whānau, community, culture, language, identity and whakapapa, which many later struggled to regain, or worse, gave up wanting to.

The trauma arising from the removal of Māori children from home was made worse by their experiences within the boys' and girls' homes, youth justice facilities, psychiatric hospitals and other facilities in which they were detained.

Whether young Māori were placed in welfare or youth justice facilities, hospitals, faith-based institutions or other foster or adoption placements, they were often moving into a Pākehā system. Pākehā concepts of health and wellbeing, crime and justice, mental illness, spirituality, family and kinship, and the place of children differed in fundamental ways from those of Māori. Yet Pākehā concepts were seen as norms that could be imposed on Māori.

While in care, many tamariki Māori experienced serious abuse and neglect, including physical assault, rape and sexual assault, weeks of isolation, improper treatment and racial slurs. For some, experiences of physical and sexual violence or other mistreatment were regular, relentless occurrences, having lifelong effects.

Māori survivors also experienced other types of abuse in care. We heard of cultural neglect, belittling of Māoritanga, and racist abuse. Survivors spoke about abuse that was aimed at isolating them from their culture, such as being scorned and abused for being Māori, being beaten for speaking reo Māori, having their Māori birth names changed and being purposefully adopted and fostered out to non-Māori. As many of our contextual witnesses recognised, these types of abuse towards Māori survivors are a result of, and continue the effects of, colonisation, assimilation and institutional racism.

One survivor described being torn from her whakapapa while in care: "I was taken inside and they saw my taonga … it was four generations old … from nowhere these four men came forward and they held me to the ground and they injected me. When I woke up I woke up in a bed and … they had cut my taonga off."[32] She could not stop crying for the taonga "because it was my family … they'd not only took my Mum but they ripped my tīpuna away".[33]

Another survivor told us of his abuser saying: "no one's going to believe you if you say anything because you're just a Māori and no one wants you".[34] Through these experiences: "I questioned my manhood. I felt like my mana had been taken."[35]

Some Māori survivors told us that being taken into care, and experiencing abuse and racism while in care, had disconnected or further disconnected them from their whānau, whakapapa and culture, resulting in a sense of isolation, deep loss of identity and a sense that they did not fit in either the Māori or Pākehā worlds.

For many Māori survivors, connecting or reconnecting back to their culture, language and whakapapa has been an important part of their healing from the abuse they experienced. Others have had difficulty reconnecting after being in care for so long, or feared that they would not be accepted. Some were hostile or fearful towards te ao Māori due to the racism they had experienced in care, or in some cases because their abusers were Māori.

It is likely that Māori over-representation in care, and the violence they experienced while in care, has been a factor in Māori over-representation in other areas such as homelessness, addiction and domestic violence. In particular, it has contributed to subsequent Māori over-representation in the criminal justice and prison system. There are clear links – for Māori and non-Māori – between experience in State care and later imprisonment.[36] According to research prepared for the Waitangi Tribunal, 80 per cent of current prisoners have spent time in State care.[37] The Waitangi Tribunal has also acknowledged the connection between State care and gangs, noting that an estimated 80 to 90 per cent of Mongrel Mob and Black Power gang members had been State wards.[38]

> *"[T]he Black Power and the Mongrel Mob took off so fast during the '70s, cos there were a lot of unhappy kids, Māori kids around, who weren't sure of themselves in any world."*[39]

This was affirmed by our engagement with several Māori survivors who told us that the isolation, discrimination and abuse they experienced during care had contributed to many of them later joining gangs. Some Māori survivors told us that part of the

psychological abuse they experienced included being told by staff members that they would end up in prison, and many accepted that crime and prison would be the natural progression in their lives.

The impacts of being taken and abused in State care are not only felt by individual survivors, but also collectively and intergenerationally by their whānau and community. The taking and abusing of children has also created a collective mamae, or hurt, and whakamā, or shame,[40] and has led to children having limited knowledge of their whakapapa and being disconnected from their culture and identity because of what they experienced. It has led to tamariki, partners, whānau, hapū, iwi and hapori, or communities, being exposed to mental and physical health issues, drug and alcohol abuse, violence, relationship difficulties and family breakdown.

One survivor described how the extreme violence he experienced in boys' homes carved a "deep groove" in him and was passed on "to the people we came in contact with ... including our families."[41]

Te haerenga mō ngā uri o Te Moana-nui-a-Kiwa
The journey for Pacific peoples

The experiences of Pacific people in care are also framed by the broader colonial context, and accompanying racism, discrimination, and power inequalities.

Pacific migrants came to Aotearoa New Zealand throughout the colonial period, but larger-scale migrations began in the 1950s, occurring in a series of waves which continued through the rest of the century. Most Pacific migrants to Aotearoa New Zealand have come from Samoa, Tonga, the Cook Islands, Fiji, Niue and Tokelau, but some have come from others of the many Pacific nations. People brought distinct languages, cultures, belief systems to their new homes. One report to the Ministry of Education stated that "there is no generic 'Pacific community' but rather Pacific peoples who align themselves variously, and at different times, along ethnic, geographic, church, family, school [and other] lines."[42]

Pacific migration to Aotearoa New Zealand was often economically motivated. For much of the post-war period, New Zealand's government and industries viewed Pacific peoples as a source of cheap labour for a growing economy – an attitude that reflected New Zealand's colonial relationship with the Pacific and with nations such as Samoa and the Cook Islands.[43] People from Pacific nations saw migration as a source of jobs, money, and education, all of which could be used to support families and villages at home.[44]

Migrants from Pacific nations settled in cities where they and their children faced cultural and language barriers; racism at personal, cultural and institutional levels; and social and economic deprivation, including inequities in incomes, health, education

and employment. Pacific churches grew and became important centres for social life and community support, holding considerable social influence.

In the eyes of the Palagi majority, migrants from Samoa, Tonga, Cook Islands, Fiji, Niue, Tokelau and other places were all regarded as homogenous 'Pacific Islanders' instead of the diverse group of Pacific peoples that they were.[45] This new identity was created by Palagi and forced onto Pacific peoples, and contributed to their subsequent treatment by government agencies.[46] It obscured the fact that many Pacific people had New Zealand citizenship.

By the early 1970s, as New Zealand's economy declined, political and public attitudes turned against Pacific migration, leading to increased incidence of overt racism and racial hostility. Police and immigration authorities targeted Pacific peoples for immigration checks while largely ignoring European migrant communities; and their actions culminated in the infamous dawn raids in which Pacific peoples' homes were invaded as Police sought 'overstayers' for deportation.[47] When computerised immigration records were introduced in 1977, the first accurate picture of overstaying patterns showed that 40 per cent of overstayers were actually British and American, despite these groups never being targets of Police attention.[48]

Against this context, Pacific people have been placed in State and faith-based care in Aotearoa New Zealand. Inadequate and inconsistent approaches to recording ethnicity have meant that there is no clear picture of the number of Pacific peoples who were in care between 1950 and 1999, or the abuse they experienced. For much of this period, Pacific people in care were mis-recorded either as Māori or in an ambiguous 'Polynesian' category that also included Māori.[49] Pacific people with mixed ethnic identities were often reported and recorded under their other ethnicity and their Pacific identity was ignored.[50]

There are very few, if any, records that distinguish different Pacific ethnicities. We also heard from survivors that staff at residences discouraged them from acknowledging their Pacific heritage, which may have led to further underreporting. This absence of data makes it very difficult to build an accurate picture of the harm experienced by Pacific communities.

This is made even more difficult by the fact that for survivors from Pacific communities, disclosing abuse could be particularly difficult, sometimes because of language barriers, or because of cultural barriers such as respect for the church and authority. As Dr Sam Manuela explained, the power relationships between young people and older or authority figures meant that speaking out could be difficult.[51]

Spending time in care, and being abused in care, could also be a deep source of shame for survivors and their families, also making these experiences very difficult to

speak about. Survivor Fa'amoana Luafutu told us that he carried his father's pain and shame at seeing his family name associated with the courts during his time in care.[52] Others told us that they wanted to remain anonymous when giving evidence to us so they would not bring shame on their family by disclosing that they had been in State care.

Survivors found it particularly difficult to disclose abuse that occurred in faith-based institutions. Many Pacific people have a deep respect for their churches and faith leaders. To challenge the church was also to challenge the family's faith, core beliefs, way of life and community.

One survivor told us how difficult it was to discuss her sexual abuse by a Catholic brother. It was "shameful that I had gone through that terrible trauma and experience, and that it was related to sex which is a taboo".[53] In particular, this experience could not be discussed between a daughter and father.

The Catholic faith was "a cultural way of life" for her family, and the brother had been able to abuse her because of the family's contact with the church.[54] Disclosure under those circumstances "would be calling into question my parents' faith", and would also leave them questioning their parenting choices.[55] "The respect one feels for their parents is very strong in my culture, so it would cause me emotional turmoil to think about how they might take it."[56]

Another witness told us that, when she disclosed the abuse of her niece by a Catholic priest: "Members of my family were the most brutal and hateful. They felt we shamed the family name and challenged divine authority; hence we will be cursed."[57] This witness asked: "How do you come back from that?"[58]

These barriers mean it is particularly difficult to build a clear picture of abuse of Pacific peoples in care. However, we do know that Pacific peoples have been over-represented in the youth justice and child welfare systems, and therefore in those pathways into care.[59] There is also evidence that Pacific peoples have been over-represented in schools for people with learning disability, and in health camps.

Discriminatory and culturally ignorant attitudes have also contributed to these placements. Some were placed in care after experiencing violence or neglect in their communities or homes.

From those who have come forward we know that Pacific children and young people suffered serious physical, sexual, emotional and cultural violence while in care, leading to a legacy of physical, mental and emotional pain; lost opportunities and potential; and cultural dislocation, for them as individuals and for their wider families and communities.

Pacific survivors have told us that, in institutional environments where violence was already common, young Pacific peoples were targeted for particularly brutal treatment. One survivor recalled:

> *"The racism was another thing ... if you were an Islander you were dog shit. They would step all over you. Staff used to tell me nobody wanted me and other things like 'you're useless, you should go and kill yourself".*[60]

Survivors recalled that Palagi staff members targeted young Pacific peoples for sexual abuse. Survivors also reported that the physical and sexual violence they experience was often accompanied by racism and cultural denigration. Dr Oliver Sutherland records that young Pacific peoples in care were called "savages" and other racist slurs, and staff attempted to force them to conform to Palagi ways.[61]

This abuse compounded the hurt arising from separation from their families and communities, which often resulted in young Pacific people losing their support networks, and their language, culture and sense of identity.

We heard from several survivors that they were never told of their Pacific identity and heritage. One survivor believed throughout his time in care that he was Māori, when in fact he was Samoan: "I was denied any knowledge of my Samoan family, culture and identity. I am covered in Māori tattoos because I believed that was who I was".[62] Another said that because of his time in care he had "forgotten a lot of the fa'a samoa and how to do things the Samoan way."[63] When he saw his family again, "I felt very lost with them."[64]

Fa'afete Taito told us that guards at Owairaka refused to acknowledge that he was Samoan, and insisted that he call himself a New Zealander:

> *"By removing me from my family, I lost part of my identity. To be taken away from my mother at such a young age had a profound and lifelong impact on me. My mother was everything to me in terms of being Samoan, being Christian, being my family. The impact was even greater as there was no family meeting or explanation of why I was being removed."*[65]

Mr Taito also told us of another enduring legacy of his time in care:

> *"[T]he world of State care and gangs takes away your ability to love and care. My mother loved me but I lost the protective power of that love when I was removed and made a State ward. I learned that interactions with others should be aggressive, antagonistic, violent, and focused on trying to get one over the other person. As I was developing, having lost the ability to love, I began to create my own versions of love. I grew to love violence."*[66]

Taurimatanga mate hinengaro me te taurimatanga o te hunga Turi me te hunga hauā
Psychiatric care and care of Deaf and disabled people

Disability communities include a diverse range of people and includes whānau, friends, and supporters. In Aotearoa New Zealand the preferred term is disabled people. Māori use a variety of terms including tāngata whaikaha, tāngata whaiora, kapo, turi, whānau hauā and hunga hauā. We respect the rights of survivors to define how they identify themselves, including the wishes of some to not be labelled as disabled because of stigma or other reasons.

The United Nations Convention on the Rights of Persons with Disabilities describes who disabled people are and the rights they have to be free from abuse.[67] Disabled people with rights under the Convention include people with actual or perceived mental illness, people with learning disability, people who are blind, Deaf or have physical impairments, and neuro-diverse people with conditions such as attention deficit disorder or autism. The Deaf community see themselves as a linguistic minority, with a distinct culture.

A 2001 study by the Ministry of Health reported that approximately one in five adults, and one in 10 children living in households were Deaf or disabled, equating to more than 700,000 people.[68] By 2013, the number of people in New Zealand identified as disabled had increased to 1.1 million people.[69] This includes a significant number of Māori and Pacific people. A disability survey carried out by Statistics New Zealand in 2013 found that both Māori and Pacific people had higher-than-average disability rates.[70] A disproportionate number of Māori have been in disability and psychiatric care, and Māori have higher proportions of disability compared to non-Māori across all age groups. [71] Māori have also been consistently overrepresented in psychiatric care.[72]

Throughout most of the twentieth century, disabled people, and those considered to have a mental illness, were routinely removed from society and placed in large State-run institutions. Some faith-based and private organisations provided care for disabled people, and in some cases non-governmental organisations provided care on behalf of the State. However, the institutional care of the disabled in this period remained mostly the domain of the State.[73]

Parents of disabled children often faced considerable pressure from governments to place their children in State institutions around the age of five, on the grounds it was better for them and their family.[74]

This policy was founded on ableist assumptions. A United Nations Special Rapporteur has described ableism as "a value system that considers certain typical

characteristics of body and mind as essential for living a life of value … ableist ways of thinking consider the disability experience as a misfortune that leads to suffering and disadvantage and invariably devalues human life."[75] These views have coloured many aspects of care of Deaf and disabled people in New Zealand throughout our history.

In some cases, infants went into care that lasted for decades. Some disabled people never left care once they entered it, remaining in an institution for the rest of their lives.[76] Some who died in care were buried in unmarked graves,[77] prompting some in the community to describe disability care as "from cradle to unmarked grave". Others left the institutions and went straight into other full-time care settings, where many remain today.

The goals of institutional care for disabled people ranged from treatment, work training, and rehabilitation through to punishment and containment from society. Advocates of eugenics (a pseudo-science aimed at improving the "race" through selective breeding) believed that disabled people should be separated from society to prevent the breeding of a "subnormal" race.[78]

In the 1950s and 1960s, New Zealand had a number of public psychiatric and "psychopaedic" hospitals – institutions primarily for people with learning disability.[79] Residents of these institutions included adults and children, and some institutions included babies.

Large residential facilities included facilities in Avondale (known as Auckland, and later Oakley and Carrington); Papakura (Kingseat and later also Ravensthorpe); Māngere; Waikato (Tokanui); Marton (Lake Alice); Levin (later Kimberley); Porirua; Nelson (Ngāwhatu and Braemar); Hokitika (Seaview); Christchurch (Sunnyside and Templeton); and Otago (Seacliff, Cherry Farm).

The Levin and Templeton facilities specialised in care of people with learning disability, while the others focused on psychiatric services or a mix of the two. Together, these facilities housed more than 10,000 people.[80] In addition, hundreds of children attended State special schools (for children with learning disability), schools for the blind, and residential Deaf schools.[81] Children and adults with physical impairments were also sometimes taken away from their families, including, for example, to rehabilitation facilities for children with polio.

By the 1970s, following many years of advocacy from the disability community, government's official policy on institutionalisation began to shift. The Government banned the opening of new psychiatric and psychopaedic institutions in 1974, but the change from large institutions to community-based care happened slowly.[82]

In 1986, the Department of Health published a 'Review of psychiatric hospitals and hospitals for the intellectually handicapped'. It raised concerns over the 'low stimulus

therapy' being used in these hospitals, which often referred to what "can only be a euphemism to describe barren walls and door, a mattress on the floor of a cell and loss of control of such amenities as light, heat and ventilation".[83]

The provision of care was, overall, inadequate and led to a lack of dignity. The report found:

> *"The picture of under-stimulated, under-occupied, under-noticed patients standing or sitting aimlessly in stark, crowded, smoke-filled day rooms has not been totally eliminated."*[84]

The report also noted that "at one psychopaedic hospital at times patients may have no underwear for several days".[85] It was common for toilets and bathrooms to have no doors or cubicles, either through lack of maintenance or to allow a small number of staff to supervise a large number of people. In some wards for residents with learning disability, toilets were "of a bench type in open corridors", even in recently upgraded facilities.[86]

During the 1990s, the large psychiatric and psychopaedic hospitals closed their doors, and more than 10,000 people were transferred out of these institutions, most of them into community-based care.[87] With these closures, survivor groups and their supporters increasingly called for the Government to acknowledge the abuse and neglect that many former residents had experienced. More and more survivors came forward to talk about their experiences, and some survivors took their cases to the courts.

The Government responded by setting up the Confidential Forum for Former In-Patients of Psychiatric Hospitals, a panel of people appointed by the Government to listen to the experiences of patients, their families and staff members. It ran from 2004 to 2007, and heard from more than 500 people. Later, the Government established the Confidential Listening and Assistance Service to serve a similar function for survivors of abuse in all State settings. This service, however, only had limited engagement with people with learning disability, and "only scratched the surface of the issues" faced by this community.[88]

Survivors were admitted or committed to psychiatric hospitals for many reasons, not all to do with mental illness as we now understand it. Other contributing factors may have included racism, ableism, experiences of violence and abuse in the home, behavioural issues, and gender identity and sexual orientation that did not conform to social norms at the time of admission. Some were admitted or committed following misdiagnoses; for example, Deaf survivor James Packer, who has Asperger's syndrome, described his admission to psychiatric care after he was misdiagnosed as having schizophrenia.[89]

Reports from the confidential listening services, and evidence to this inquiry, showed widespread accounts of abuse and neglect within psychiatric hospitals.

Survivors who were in psychiatric and psychopaedic institutions have reported routine physical violence and sexual abuse at the hands of staff and other residents; being subjected to invasive treatments such as ECT and deep sleep therapy without consent or as punishment; being force-fed medication and then abused while unconscious; being subjected to inappropriate procedures including vaginal examinations; being threatened with a lobotomy, and being subjected to solitary confinement and isolation. We are also aware of reports of disabled women and girls being sterilised without consent,[90] and being injected with the contraceptive Depo Provera, both as a contraceptive and to prevent menstruation.[91] Research conducted after the closure of one psychopaedic institution found that there had been little development of life skills for the children in care, and that some disabled people entered the institution able to speak but were unable to by the time they left.[92]

Large institutions are now closed, and care for mental illness and for disabled people has largely shifted into psychiatric units within general hospitals, non-government residential facilities, and community-based residences. Deaf and disabled children attend specialist schools or specialist units in mainstream schools. However, abuse and neglect of Deaf and disabled people did not stop with the closure of these large institutions. We have heard that disabled people have suffered abuse in community-based facilities including kaupapa Māori facilities, and other settings such as police custody, and transition between settings. Recent reports have also pointed out concerning practices in disability care even today. For example, independent reviews of health and disability facilities in 2017 and 2020 found that seclusion was used "too often, for too long, and not always with clear justification".[93] A 2018 government inquiry into mental health noted that seclusion, restraint and compulsory treatment were overused within our mental health system, especially for Māori and Pacific peoples, and that the use of compulsory orders sometimes resulted in trauma and harm.[94]

Across the settings, disabled people and advocates have told us that they regularly experienced medical, physical, emotional, cultural, spiritual and educational neglect while in care. Examples of educational neglect include being segregated from their non-disabled peers, only attending school for half the day, or not learning to read. Many disabled people also experienced significant separation from their families, whānau and communities from a young age. We have heard that disabled people also experienced financial and property abuse, exploitation, silencing and restraint as well as "narrative abuse" where words and phrases are used to undermine mana and esteem.[95]

Deaf survivors have also told us of educational, cultural and linguistic neglect. Some have said they felt the Government did not care about Deaf culture or Deaf language. Most teachers in Deaf schools were hearing and would punish students for using sign language, forcing Deaf students to lip read and communicate orally. We have heard that even when the ban on sign language was removed, the quality of education was low and did not provide for Deaf culture or Deaf language.

International research suggests that disabled children and adults are at greater risk of abuse than people who are not disabled.[96] For example, the risk of child sexual abuse has been estimated as three times higher for disabled children,[97] and disabled people are also more likely to experience abuse over prolonged periods.[98] Caroline Arrell, who works with people with intellectual disabilities, explained:

> *"Because people with intellectual disabilities rely on others for communication and support, they have less power in relation to the staff that support them. This power imbalance is known to increase the opportunities for abuse, neglect, lack of personal informed decision making etc to occur. This power imbalance is also prevalent in how they are able to report and contribute to the process of describing their lived experiences in State-based care."*[99]

Children in social welfare care or youth justice were often found to have neurodiverse conditions such as dyslexia, that are not recognised early enough to provide adequate support. Disabled children could go into social welfare care without the same protections as non-disabled survivors.

Disabled people can face significant barriers to disclosing abuse, or even recognising their experiences as abusive. Survivors have described barriers including communication barriers; a lack of education about sexuality, consent, or what constitutes abuse; and fear of punishment or retribution.[100]

Survivors have also spoken about trying to complain but being disbelieved, or having their experiences covered up. Further, the fact that a survivor may currently reside in a residential care setting or receive disability support services is a significant barrier to disclosure, particularly if their abuser continues to work in the sector or to provide services to the survivor.

Survivor Walton Ngatai-Mathieson told us he was raped in an institution aged 12, but that he did not realise until he was an adult that what he experienced was sexual abuse: "I did not know anything about sex. I did not know what was happening".[101]

Research about abuse in psychopaedic institutions has found that some disabled people did not recognise their experience as abuse because they had lived in environments where abuse and neglect were normalised.[102]

If abuse goes unreported, it cannot be redressed. Many of the disabled survivors who have met with the Commission told us they have not sought redress. Survivors with learning disability struggle to navigate any of the current avenues to redress, and many disabled survivors simply do not understand what redress is.

The recent introduction of more rights-based models of care, such as supported living, individualised packages of care, and inclusive education have reduced the risk of abuse and neglect of Deaf and disabled people.

Te haerenga mō te hunga i ngā taurimatanga whakapono
The journey for people in faith-based care

Faith-based organisations in Aotearoa New Zealand have long traditions of providing residential care in a variety of settings, including children's homes, foster homes, boarding schools, and homes for unmarried mothers. It is estimated that around 205,000 people passed through these residential faith-based care settings between 1950 and 1999.[103] Abuse in faith-based care has also occurred in other contexts, for example at church, in the presbytery, or in survivors' homes.

The journey into faith-based care has varied. For some survivors, time spent in faith-based care was temporary, and resulted from choices made by their parents to place them under the care of faith-based institutions. An estimated 83,000 people spent time in faith-based boarding schools between 1950 and 1999,[104] and many other survivors have spent time under the pastoral care of churches and their clergy in non-residential settings. A significant number of survivors told us of abuse in churches, non-residential schools, faith-based schools or other settings such as scout camps.

For other survivors, placement in faith-based homes was a matter of life circumstances. For example, we heard from survivors who were placed in faith-based children's homes when their parents were abusive or could not care for them. We have also heard from women survivors who lacked support when they became pregnant and were sent to homes for unmarried mothers. In 1977, about a quarter of children living in faith-based homes were State wards.[105]

Leaders in faith-based communities hold unique positions of power over their congregations. They are often viewed with great respect and deference and placed in positions of great trust, because of their roles as spiritual guides and "representatives of God".[106] This can create circumstances in which abuse can occur – for example, parents may be more willing to leave their children alone with religious leaders than other adults.[107]

Some researchers have suggested that elements of institutional culture within faith-based organisations also tend to support abusive attitudes and behaviours.

Researchers referred to elements such as some churches' attitudes to celibacy, obedience to God, suppression of individual will, hostility towards children, attitudes to gender and sexuality, and ideas about 'the transcendent power of suffering' as factors that support abusive attitudes and behaviours.[108]

We heard from numerous survivors who experienced serious physical, sexual and emotional violence in faith-based settings such as churches, boarding schools, and children's or foster homes. One survivor described her parents regularly leaving her in the care of the priest Michael Shirres, who sexually abused her over a period of eight years. She said her parents were "the most Catholic people I knew" and would not have believed that a priest was capable of abuse.[109]

Another survivor, John, described his attempts to disclose abuse by a Catholic religious brother: "My father was very religious and he didn't believe me. He said words to the effect, 'a man of the cloth would never do anything wrong and I never want to hear about this again'."[110] John's relationship with his father deteriorated from that point, while the abuse continued and escalated.[111]

Ms K, who was abused by two Marist Brothers, told us:

> *"As a little child, my life was totally engrossed in church, school and home – all under the banner of the Catholic Church. My abusers were part of that. I went to church and there they were, I went to school and there they were, I went home and there they were. I had no safe place to go. All had been violated."*[112]

Internationally, inquiries have identified the systemic response of faith-based institutions to attempt to deny or cover up abuse. Churches have conducted their own investigations, rather than reporting issues to police. Their independence has also provided some protection from scrutiny.[113]

Survivors recounted similar experiences to us. Some survivors who spoke to the Commission said they had attempted to disclose the abuse they experienced, but felt they were ignored by church leaders and other authorities. Several referred to priests, minsters, clergy or religious people being offered retirement or encouraged to move in order to escape detection. One survivor referred to this as "the geographical cure".[114]

Some survivors who were abused in faith-based schools were so traumatised from the abuse they were effectively denied an education, and therefore opportunities to earn incomes or have the career they sought.

Another recurring theme was of racism in faith-based settings, particularly in homes for children or unmarried mothers. Survivors spoke of Māori and Pacific children

being treated more harshly than non-Māori, for example being singled out for physical assaults. Some also spoke of Pākehā children having greater chances of adoption, and Māori and Pacific children being at greater risk of being placed in long-term care.

Te haerenga mō te hunga i ngā taurimatanga Karauna
The journey for people in State care

The State has had responsibility for the care of children, young people and vulnerable adults in a range of settings. These include the large residential institutions already discussed such as boys' and girls' homes, youth justice residences, and psychiatric and psychopaedic hospitals. They also include smaller "family homes" (homes in which many children in State care would be placed, often together with the children of the supervising parents, for periods of time), as well as foster care. Some children and babies who were in the care of the State were adopted into families.

We have heard from many Māori, Pacific, disabled and Pākehā survivors of abuse in State care. Many survivors who entered State care, particularly the residential institutions "family homes" and foster care, came from working class families or a background of poverty.

State care in New Zealand can be traced back to the 1860s, when the State first established industrial schools for children and young people. Most children and young people who were in State care in the nineteenth and twentieth centuries were placed there by court order after committing relatively minor offences. A minority entered care after having found to be abandoned, neglected or otherwise abused by their families, or when their families were unable to care for them. This was for many different reasons, including poverty and the illness or death of a parent.

Between 1948 and 1972, annual appearances in children's courts grew from about 2,000 to approximately 13,000, a more than six-fold increase.[115] This occurred in the context of the social changes already discussed, including heightened concerns about 'juvenile delinquency', urban migration by Māori, and growth of the Child Welfare Division. From the late 1940s to the early 1970s, the number of children in State care rose by about two-thirds.[116] The peak was in 1977, when 7,214 children and young people were in State care. As already noted, the majority of those children and young people were Māori.

Deregulation came in the 1980s, and along with it the passing of State care functions to the private and voluntary sectors. This, together with criticism of children's residences, led to the Department of Social Welfare closing the majority of the children's residences in favour of community-based alternatives. The Children, Young Persons and their Families Act was introduced in 1989. The Act sought to

put the responsibility and decision-making for children and young people back on families and led to a substantial drop in the number of children coming before the courts. The number of children and young people in care also dropped. Today, most children and young people in State care live in some form of out-of-home placement. This may include foster placements (with relatives or non-relatives), or residential accommodation run by government or community agencies.

Survivors of State care told us of the physical, sexual and emotional abuse and neglect they experienced. We heard of horrific abuse at settings such as Moerangi Treks and Whakapakari, including repeated rape, the forcing of children to dig their own graves and shooting over their heads. Almost all the boys' homes we heard about had kingpin systems, where the kingpin was authorised by the homes' staff to punish other children. Children were subjected to "blanketing" and "stomping" initiations, where they were covered in blankets by others and kicked and stomped on. There was a strong culture of "no narking" in the residences, enforced by assaults and threats.

Many were subjected to "secure" – a form of solitary confinement – including in many cases automatically on admission. Very young children were placed in secure, and some children were subjected to secure for months. One of the inquiry's witnesses spent 320 days out of a period of 563 days in solitary confinement. Another witness, Mr X, was seriously sexually abused while locked in secure.[117] No education was provided for children in secure.

We also heard from many survivors who were abused in "family homes", foster placements, and adoption placements, including some who were moved continually from placement to placement throughout their childhood. Once discharged from State care as teenagers, survivors often spoke of being left to fend for themselves.

Te haerenga mō ngā wāhine me ngā kōtiro
The journey for women and girls

The majority of survivors currently registered with us are male.[118] But women and girls have distinct reasons for being placed in care, and have suffered distinct types of harm.

For example, we have heard from many women who were sent to homes for being unmarried mothers, where they were treated with contempt and subjected to physical, emotional and sexual abuse, then coerced or deceived into giving their babies up for adoption. One survivor, Mrs D, said the matron at the home run by the St Mary's Homes Trust Board "punched me and slapped me as I was in labour", then forcibly removed the baby against her will immediately after the birth.[119] Many

women have told us of their grief and regret at being separated from their children. Mrs D told us of the lengths she went to track down her son, and of her experience speaking to the mother who adopted her baby years later:

> *"The mother … said she had been waiting for a call from me for 30 years. She told me she had paid $200 to the matron at St Marys to buy my son to replace her baby that was stillborn."*[120]

We also know that in the 1950s and 1960s there was a general fear of "moral delinquency", particularly as it related to girls. Cultural and institutional racism also played a significant factor in the journey into care for girls. Advocate Dr Oliver Sutherland told us that Māori girls were at particularly high risk of being taken from their families into care. He found that, between 1969 and 1976, Māori girls who were brought before the courts were significantly more likely than either non-Māori girls or Māori boys to be placed in State care. Between 1974 and 1976, all of the twenty 15-year-old girls sentenced to borstal were Māori.[121]

Girls seen as difficult to control could also be labelled mentally unwell and sent to psychiatric institutions. For instance, at Fareham House in the late 1960s, a school initially established for Māori girls, between 20 per cent and 30 per cent of girls were transferred to psychiatric hospitals.[122]

One girl, Beverly Wardle-Jackson, said that even at her young age she "could see the injustice of dumping us girls into mental institutions, simply because there was nowhere else for us to go. It seemed as though we were some kind of social experiment"."[123] She said she was sent back to Porirua Hospital whenever she was regarded as being "difficult", but she considered herself to be "just a lonely, isolated teenage girl".[124]

Most of the women survivors registered with us described experiences of serious physical, emotional and/or sexual violence while in care. We heard from women who had been raped and sexually assaulted as children or young adults in the care of schools, churches, foster homes, psychiatric hospitals and other institutions.

Several witnesses described how girls – even as young as eight or nine – endured forced examinations for sexually transmitted diseases in stirrups, and were sexually abused during these examinations. In some institutions these examinations occurred on admission into care or after being out for a day. In other institutions they occurred more regularly.[125] One survivor described a female staff member holding her down while a male doctor was "touching parts of my body … that he should not have been".[126]

As noted above, we are also aware of reports of women and girls in institutions, particularly disabled women and girls, being sterilised[127] and being injected with contraceptives, without consent.[128] Previously institutionalised girls were more likely to remain in, or return to, institutions because they were viewed as "risky" or in need of further containment.[129]

Ngā panga ā-mate noa , ā-reanga hoki o ngā mahi tūkino
Life-long and intergenerational impacts of abuse

Survivors of all backgrounds have suffered significant trauma and ongoing harm from their experiences in care. Many experienced emotional and psychological strain when they were removed from or otherwise left their kāinga, or homes, and whānau, and placed in care settings. Some experienced frequent changes of placement and lengthy periods in care. For many, being placed in care meant they lost contact with family, community, culture, language, identity and whakapapa, which many later struggled to regain.

The experiences of abuse and neglect in care have had profound and lasting impacts for survivors.

Consistently, survivors have described the impacts of abuse in holistic terms. That is, abuse has affected everything about their lives. It has harmed their physical health, their psychological and emotional wellbeing, their education and economic prospects, their relationships with family and others, their cultural and spiritual lives, and much more, leaving a legacy of harm that has spanned generations.

One survivor told us that all of the children and young people who passed through Lake Alice received life sentences;[130] another spoke about the abuse being always with her, a "huge and dark" presence that had remained throughout her life.[131] They told us that any redress process will therefore need to support them to rebuild lives that have been deeply and profoundly affected by the abuse they experienced, and account for the lifetime impacts on them, their whānau, hapū, iwi and hapori or communities.

The impacts include serious physical injuries from abuse, such as head injuries, internal injuries, and broken bones. Treatment was not always provided, and, for some, these injuries have had lifelong consequences, for example from impaired brain functioning, memory loss, and other consequences of traumatic brain injury. Many survivors also developed longer-term medical conditions associated with trauma and abuse, including cardiovascular problems, diabetes, malnourishment, sexually transmitted diseases, chronic pain, and incontinence.

Mental health issues, including psychiatric disorders, are also common. Many survivors struggle with daily life. For example, many survivors have experienced symptoms of post-traumatic stress such as flashbacks, nightmares, emotional distress and trouble sleeping. Many have also experienced anxiety and depression, along with feelings of shame, guilt, hopelessness, and anger, often in response to triggering memories or events. It is common for survivors to have turned to drugs and alcohol or other addictive coping mechanisms in attempts to numb their distress, and not uncommon for them to have attempted suicide.

Abuse also has a profound impact on the relationships survivors need to navigate in their everyday lives. Some continue to mistrust people in authority, and to fear hospitals, schools, churches, and other institutions that remind them of their abuse. Some have found it difficult to trust people or to form close relationships, including with their own families. Some find it difficult to socialise or interact with people generally, due to low self-worth and anxiety about how they are perceived or might react in certain situations. Some relationships were destroyed as the result of the abuse.

Abuse has affected survivors' education and ability to be employed. Survivors have told us of their sense of lost potential and wasted opportunity because of the impacts of their abuse, and also because they received limited education while in care. For some, education was not provided, or for some it was interrupted by regular changes in school or care settings or was cut short when they left school after being abused. Some, particularly those with learning disability or impairment, were unable to develop basic life skills. Some have been unable to work due to their injuries or impacts of post-traumatic stress disorder. The loss of economic opportunity has ongoing consequences, including financial insecurity and loss of self-worth for generations.

Some survivors have turned to crime and gangs, as ways to survive and belong. They told us their paths in life had been fixed from a young age, giving them few options or ways to determine their own futures. Many carry a burden of fear and anger, which in some cases has turned to violence. For many survivors, being taken into care, and then abused, became a pathway into other institutions including prison. As mentioned above, Waitangi Tribunal documents estimate that more than 80 per cent of current prisoners and between 80 and 90 per cent of members of Black Power and the Mongrel Mob have spent time in State care.[132]

Abuse has also caused harm to survivors' families and has had intergenerational effects. Family members told us they felt powerless or guilty for having failed to protect their loved ones. Partners and children live with the survivors' hurt, depression, loss, and anger. Some survivors struggle to show affection or care for

their children, and some have gone on to inflict violence and other harm on the next generation.

"One way or another the abuse is always with me"[133]

Pānga o ngā tūkinotanga i ngā horopaki whakapono - Impacts of abuse in religious settings

Those that suffered abuse in religious settings often suffered particular harm due to the religious dimension to their abuse. This religious abuse typically co-occurs with other forms of abuse, including physical, sexual, emotional and psychological abuse, and neglect. Dr Thomas Doyle, who is a former priest and a leading expert in abuse in the Catholic Church, refers to it as "soul murder".[134]

Institutions forcing religion onto non-religious individuals can also result in harm. Many children housed in Salvation Army homes did not come from religious backgrounds but "were not given any choice about what to believe".[135] "I was put down and made to feel like a sinner. I was told that the punishment for not accepting Jesus and God into my life was the depths of burning hell … In my view, being subjected to this as a child easily amounts to emotional abuse. The torment that is brought was overwhelming as it made me extremely fearful of non-compliance."[136]

The impact of religious abuse can be compounded at an individual level by an inadequate response to abuse, particularly if the faith-based institution is seen to hide and even facilitate harm through inaction.[137]

Many of the survivors we heard from told us that they had been sexually abused. Victims of religious abuse may believe that any form of sexual expression, whether thought, word or deed, is sinful.[138] This leads to moral confusion when a religious figure leads the survivor into a forbidden sexual act.[139] The survivor may experience shock, confusion, guilt and shame. People in some faiths are taught that homosexuality is unnatural, and that homosexual people are "fundamentally disordered".[140] If the abuser is the same sex as the victim, this is likely to lead to further distress and harm.

An abuser's perceived closeness to God intensifies the emotional, psychological and spiritual impacts of the abuse, and can make disclosure extremely challenging.[141] Survivor Jacinda Thompson highlighted this when she told the Commission she "viewed clergy as doing God's work" and therefore trusted the Anglican priest, who subsequently abused her, "as [she] would trust God".[142]

Some survivors were left dealing not only with their own trauma and spiritual harm, but also feeling responsible for the spiritual downfall of their abusers, "I felt dirty, ashamed and shocked and told no one. I was convinced it was my fault. My mental

health deteriorated, and I was diagnosed with depression and anxiety."[143]

Survivors who experience religious or spiritual abuse can have a shaken sense or complete loss of faith and spirituality – things that are sometimes central to the survivor's sense of identity prior to the abuse.[144] They may stop participating in religious observances and practices all together. This can contribute to an intense sense of loss of the spiritual dimension of identity, which previously provided a source of strength, support and meaning.[145] They may not be able to attend the wedding, funerals and tangihanga, baptisms or other family or whānau gatherings if those events take place in a religious setting or with religious influence and direction. The signs, symbols, rituals and persons that represented spiritual security become enduring reminders of the betrayal and trauma suffered.[146] Like survivors, whānau and wider communities can feel betrayal, resentment, despair, anger, guilt and loss of connection and confidence in religious leaders, and therefore loss of faith. Survivors also face damaged relationships and some are ostracised from their family and whānau and wider religious communities as a consequence of disclosing abuse.

This may be compounded where the survivor's relationship with their faith is deeply linked to their cultural worldview and identity. Survivor Frances Tagaloa said her family's faith, and taboo in the Samoan culture, worsened her concerns around disclosing the abuse:

> *"... my parents' strength of faith in the Catholic Church was significant. Catholicism for my family is a cultural way of life."*[147]

1.3 Kaupapa whakatūroro, whakahaumanu hoki me ngā mātāpono whakahaere
Concepts of harm and restoration and framing principles

Our approach to puretumu torowhānui draws from Aotearoa New Zealand's own unique Tiriti-based history and context to ensure that puretumu torowhānui effectively responds to the needs of survivors, their whānau and communities.

Te ao Māori world view offers a pathway for understanding tūkino , or abuse, harm and trauma, and restoration which centres on the oranga, or wellbeing, and mana of a person in the context of their wider whakapapa and whānau-based relationships, and on the health of those relationships.

We have chosen to draw on these tikanga Māori, or Māori customary practices or behaviours, and whakaaro Māori, Māori worldview or philosopy, to examine puretumu torowhānui, or holistic redress, because survivors of abuse in care are disproportionately Māori, and for some, a meaningful response to the tūkino inflicted and suffered can only occur on Māori terms. More than that, we consider that tikanga Māori concepts resonate with many survivors, and with their views about the impacts of abuse and the actions that are needed to restore their lives.

We also recognise the special relationship that Aotearoa New Zealand has with its Pacific neighbours and Pacific communities, and the significant number of Pacific people that experienced harm in care in Aotearoa New Zealand. We look to Pacific world views in order to understand puretumu torowhānui in a way that will be meaningful to many Pacific survivors.

These world views focus strongly on relationships between people and holistic concepts of wellbeing, and this resonates with what we heard from many survivors. Some of the most pressing survivor needs include restoration of connection and sense of belonging, including connections with whakapapa, whānau, and culture; resolution and healing of trauma; restoration of physical and mental health; provision for education, housing, employment and economic needs; and support to parent and have meaningful relationships with their children – described by survivors as the ability to love.[148]

Mātāpono tikanga Māori - Tikanga Māori concepts

At a fundamental level, te ao Māori is a relational world, in which what is tika or right depends on the operation of tikanga Māori, the primary informers of behaviour and values that have withstood the test of time. They exist in an interconnected matrix and there are no English word equivalents. Each concept has a depth and richness to it that must be understood in context. The values and principles underlying tikanga remain relatively consistent. However, the way tikanga Māori manifests in particular contexts can vary between different iwi, hapū and whānau.

Some of the core tikanga Māori concepts commonly cited are: whanaungatanga, mana, tapu, utu and kaitiakitanga. In considering tikanga Māori and the rich array of mātauranga Māori concepts that can apply to addressing abuse in care, we have been guided by our pou tikanga and have drawn on both the core well-known principles as well as principles specifically framed within the context of abuse in care.

The whakataukī, "he purapura ora, he māra tipu" has guided how we think about survivors, who we sometimes refer to in this report as "purapura ora". Purapura means seed and ora means to recover, revive or be alive. The term purapura ora was traditionally used to refer to surviving children whose parents were killed. It signified that despite suffering a traumatic event while young (where they lost a part of themselves that they will never get back) they still remain. He māra tipu refers to a garden of growth. This part of the whakataukī talks about the aspiration of all people to be able to be in a nurturing, safe place and community, where no person is excluded for any reason including disability, whakapapa and family circumstance. This is closely connected with "he mana tō tēnā, tō tēnā – ahakoa ko wai" – a phrase that means each and every person has their own mana and associated rights, no matter who they are.

We have drawn on the whakataukī "he purapura ora, he mara tipu" to refer to the life essence and the ability and potential for survivors to heal and regenerate in spite of the abuse, harm and trauma that they have experienced. Like a seed trampled in a garden, in spite of the damage inflicted, survivors of abuse and neglect in care have infinite potential to still grow or regenerate. A similar idea is captured in the pēpeha "he rātā te rākau i takahia e te moa" or "the rata that was trampled by the moa". When a rata tree is stood on by the moa as a seedling it may grow up crooked or affected in some way by being trampled on. Embedded in this saying are ideas of accountability and permanent damage as well as resilience, adaptation, growth and potential.

Tūkino is another central concept that has informed how we think about abuse, harm and trauma. The concept of tūkino reflects ill-treatment through violence, abuse, maltreatment, mistreatment, torture and rape. The term tūkino expresses the nature and extent of the abuse, harm and trauma that has been inflicted and suffered and

its severity but also acknowledges there is hope of restoration and growth. It implies a transgression that is unjust, unfair, violent, destructive, cruel and abusive. Inherent in tūkino is an acknowledgement that pain, trauma, and grief has been inflicted. We considered using the term hara to reflect abuse, harm and trauma. Hara indicates a violation of tikanga and a transgression or wrong. However, this concept was not considered strong enough and it was not quite sufficient to capture the impact and trauma that abuse has on those who are subject to it. Tūkino was seen to be more appropriate as it carries with it implication of significant distress and a negative impact on the survivor.

When tūkino has occurred, mana is impacted. Words that have been used to convey mana include power, presence, authority, prestige, reputation, influence and control. Everyone is born with and possesses mana, reflecting their actual or potential place in and contribution to their world. The mana of children in traditional Māori society, and the great care and affection accorded most children means that any action that harms a child or fails to respect the child's mana is significant. Mana has collective and individual dimensions that affect each other. We use the concept of te mana tāngata to talk about the restoration and respect for the inherent power, dignity and standing of people affected by tūkino.

Another tikanga Māori concept important to this kaupapa is utu. Utu is the imperative to set right any tūkino. Utu is the cost that must be suffered as a result of the wrong and the process of restoring the mana and mauri of those who are aggrieved through action that provides recompense, or otherwise reciprocates or balances the harm. Utua kia ea is a process that must be undertaken to account for tūkino and restore mana to achieve a state of restoration and balance. What is required to achieve utua kia ea will differ for each survivor. For some, recognition and an apology will be central but for others this may have very little meaning. Pathways of utua kia ea should include scope for survivors, both as individuals and collectively, to chart their own unique course.

The concept of puretumu includes to seek redress, compensation or obtain satisfaction. It is underpinned by seeking justice and the restoration of mana and provision of compensation to the person and their whānau. The concept of 'puretumu torowhānui', or holistic redress, in this context covers a wide range of matters that taken together might be done to put right the tūkino that has been experienced.

The concept of manaaki speaks to the need to treat others with humanity, compassion, fairness, respect and generosity, and the need for responsible caring that upholds the mana of those involved. Abuse in care can impact all parts of a person's wellbeing. To manaaki a person to grow and achieve utua kia ea may require assistance with multiple dimensions of oranga. Māori models of wellbeing

are discussed further below but generally include physical, spiritual, mental, cultural, social, economic and whānau wellbeing.

The tikanga Māori concept of whakaahuru provides for an individual to receive warmth, be cherished and receive comfort. We have drawn on this concept as it provides for the safeguarding and protection of those who have been, or are being, abused in care.

Finally, whanaungatanga is the essential principle through which every element in creation is related, tracing common descent down lines of whakapapa from a single sacred source. In a world where everything is seen through a lens of kinship, the importance of tamariki and mokopuna cannot be overstated. In te ao Māori, all people, all ancestors, and every element of nature are bound together in a web of mutual obligation; each possesses mauri or life force which must be sustained; and all relationships, human or otherwise, must be kept in balance. In this context, the connections that exist between people and the concept of whanaungatanga means that the impact of abuse in care must be looked at beyond solely the individual that has been impacted. The impact can be intergenerational and go beyond the individual and affect whānau, hapū, iwi and hāpori, or communities. Further, if an individual is seen as belonging to a matrix of kinship groups, the inherent harm of removing a child from their whānau becomes evident. This is why from a te ao Māori perspective, removal of children can itself be an act of tūkino – both towards the child and their whānau, hapū and iwi. Viewed through a whanaungatanga lens, puretumu should facilitate individual and collective wellbeing and mana, connection and reconnection to whakapapa, and cultural restoration.

Ngā tauira ora a te Māori – Te Whare Tapa Whā
Māori models of wellbeing – Te Whare Tapa Whā

In recent decades, several frameworks have been developed to describe Māori views of hauora, or health, and oranga, and in particular the spiritual, communal, and holistic ways in which wellbeing is understood. These frameworks have been described as being:

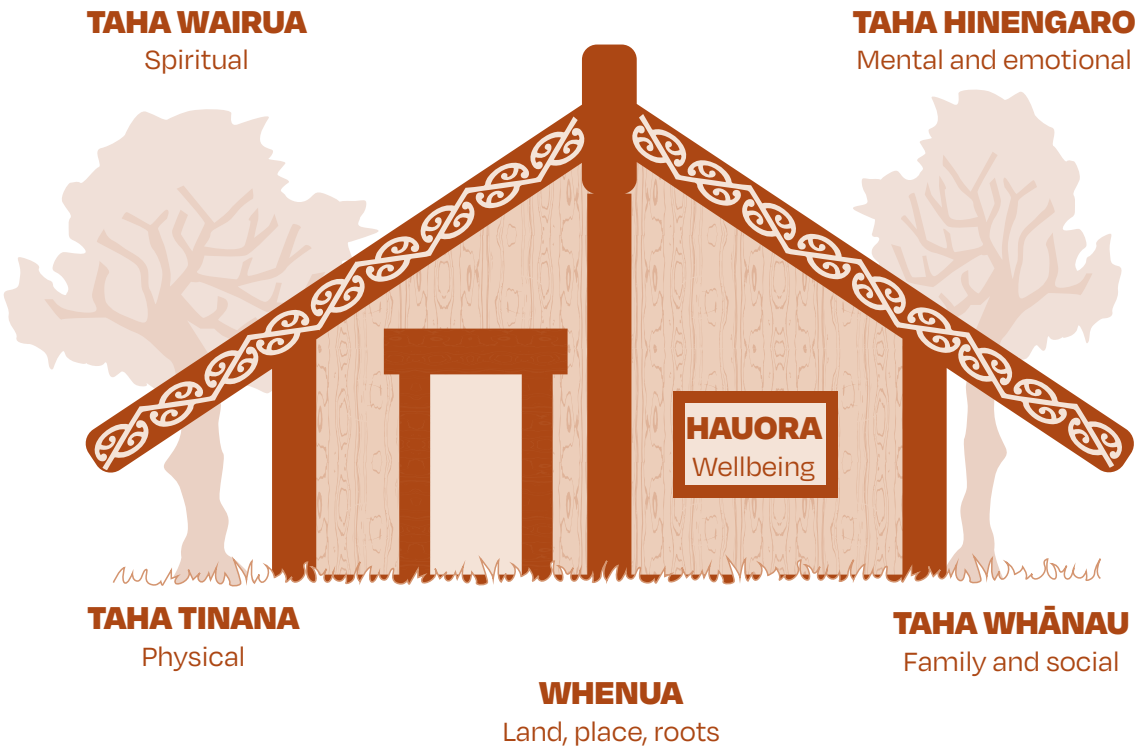
> *"... constructed from land, language and whānau; from marae and hapū; from Rangi and Papa; from the ashes of colonisation; from adequate opportunity for cultural expression; and from being able to participate fully within society."*[149]

One of the earlier Māori health and wellbeing models, Te Whare Tapa Whā, developed by Ahorangi Tā Mason Durie, is a useful model that is grounded in the tikanga Māori concepts outlined above. We recognise there are other later models; however, we focus on Te Whare Tapa Whā because it is a model many of our survivors are familiar with, and a model some Māori survivors have discussed with us.[150]

In recognising that Māori health was traditionally defined by elders at the marae, the model drew on four basic dimensions of life that are referred to on the marae, 'te taha wairua' (spiritual health), 'te taha hinengaro' (mental and emotional wellbeing), 'te taha tinana' (physical health), and 'te taha whānau' (family health).[151] This whare sits on top of the whenua (land), which forms the foundation for the other four dimensions.[152]

Te Whare Tapa Whā uses these dimensions to conceptualise Māori health and wellbeing as four walls of a wharenui.

Diagram One: Te Whare Tapa Whā



Within this framework, taha wairua includes having a sense of meaning and purpose as well as a sense of connectedness to self, whānau, and community. It can also include connectedness to nature, to whenua, and the sacred (including, but not specific to, religious beliefs and practices).[153]

Taha wairua also accounts for the presence of mana, a state not derived from personal strengths or pursuit, but "conferred by the gods, a state of spiritual authority and power, denoting a high level of health without an egocentric core". To possess mana is to know health.[154]

Taha hinengaro encompasses the nature of one's thoughts and feelings, and how emotions are expressed. An integral component of this is also how a person views themself. In te ao Māori, thoughts and feelings are seen as fundamental to health, and healthy thinking reflects fundamental values including the wellbeing of the community. To place personal ambition above communal good is to be unhealthy, even if the body is fit.[155]

Taha tinana is about one's physical health, including physical activity, how food is prepared and consumed, and tikanga around the body, and especially about bodily functions. These tikanga were routinely ignored in hospitals and other State institutions, creating an environment that caused distress and was unsafe for Māori.[156]

Taha whānau refers to the health of relationships and the wider kinship system, including not only immediate family but all kin and the wider community. Taha whānau recognises the importance of whānau and their wellbeing, and acknowledges whānau as an essential support system, and as a source of belonging and identity.[157]

The model emphasises balance and interconnection between all the dimensions. Should the wairua, hinengaro, tinana, whānau or whenua be missing, neglected, or damaged in some way, the person and their collective or group may become unbalanced and unwell.

Te Whare Tapa Whā provides a framework through which puretumu torowhānui for purapura ora, or survivors, can be viewed holistically, as a process that restores, reconnects, empowers, and builds mana.

There are also other useful models of Māori wellbeing. These include:

- the Pā Harakeke model, based on the structure of a flax plantation
- Te Wheke model, based on the tentacles of the octopus
- Te Pae Māhutonga model based on the Southern Cross constellation
- the Meihana model developed for use within the mental health system.

These various models demonstrate that a te ao Māori approach to puretumu torowhānui should be multi-faceted and holistic, and centred on supporting and improving the capability of the individuals and the collective. It should aim to heal and restore balance, by restoring the mana and mauri of survivors and their whānau, hapū and iwi, including through connecting and reconnecting with whakapapa and mātauranga Māori.

Kaupapa whakatūroro me te whakahaumanu nō ngā uri o Te Moana-nui-a-Kiwa
Pacific peoples' concepts of harm and restoration

As noted, in Aotearoa New Zealand, the term 'Pacific' encompasses more than twenty Pacific nations with unique languages, customs, beliefs, cultural values and traditions. Pacific peoples who have migrated to or were born in Aotearoa New Zealand have kept a particular set of cultural and spiritual values that have been passed down the generations by ancestors, through to families and communities.[158] These values are represented in a Pacific worldview that is holistic, collective and relational.

We heard from a number of Pacific survivors and experts at our public hearing on Pacific people's experiences of abuse in care in July 2021. In particular, a talanoa panel of Pacific experts discussed redress. The experts spoke to the importance of understanding key Pacific concepts, in particular the vā, in order to frame what a new redress approach for Pacific survivors of abuse in care might look like.

Te vā – whanaungatanga - The vā – relationality

The concept of vā is fundamental to understanding the Pacific worldview. Sister Vitolia Mo'a writes that "relationship and mutuality – the vā – signifies the vā-tapu and vā-tapuia, or the sacred relational space among inter-connected entities. Inherent in the concept of vā is the recognition of both distinctiveness and relationality." Samoan people's understanding of the workings of their social, cultural, economic, and religious systems is rooted in vā and this recognition of interconnectedness. Faasinomaga or identity "situates the Samoan person within the interconnected and inter-related levels of vā, in that which is understood as a cosmic cyclic form of existence".[159]

Albert Wendt defined the vā as "the space between, the betweenness, not empty space, not space that separates but space that relates, that holds separate entities and things together in the Unity-that-is-All, the space that is context, giving meaning to things. The meanings change as the relationships / the contexts change."[160]

Teu le vā and tauhi vā is the tending to and nurturing of interconnected relationships or vā between people and places.[161]

Conceptions of vā from across the Pacific are not identical.[162] While it would be a presumption to consider vā as a single phenomenon across Pacific cultures, there are reflections of vā in cultural practices of Pacific people who are not Samoan. Differences in detail aside, migration has meant that the essential aspects of vā are shared and recognisable across various Pacific cultures.[163]

When a Pacific person is abused in care, that is a violation of that relationship and a damage to the vā.[164] This is sometimes referred to as soli le vā.[165] Another way of looking at it is that when there is abuse, harm and trauma the vā no longer exists.[166]

Violation of the vā, or the loss of the vā, is evident in Pacific survivors' experiences of being abused and neglected in care by people who were supposed to look after them, as well as being disconnected from their families, communities, cultures and languages. To soli le vā of a Pacific person would be to violate that person, their families and their genealogies.[167] In this way, their families are also victims of the abuse.[168]

Whakamahu / whakaora i te vā - Healing / restoring the vā

Pacific cultures have various customs and practices for healing the vā and restoring this balance, including ifoga (Samoa), ho'oponopono (Hawai'i), isorosoro (Fiji), and fakalelei (Tonga) to name a few.

Ifoga is a ceremonial public apology in which an offender and their wider family make a request for forgiveness to those harmed. It can be adopted as a form of restorative justice whereby the whole family and village takes collective responsibility for the offender's actions and seeks to right the wrong directly with the victim and the victim's family.[169] One survivor explained it as "a display of significant respect, humility, and a sincere request for forgiveness".[170]

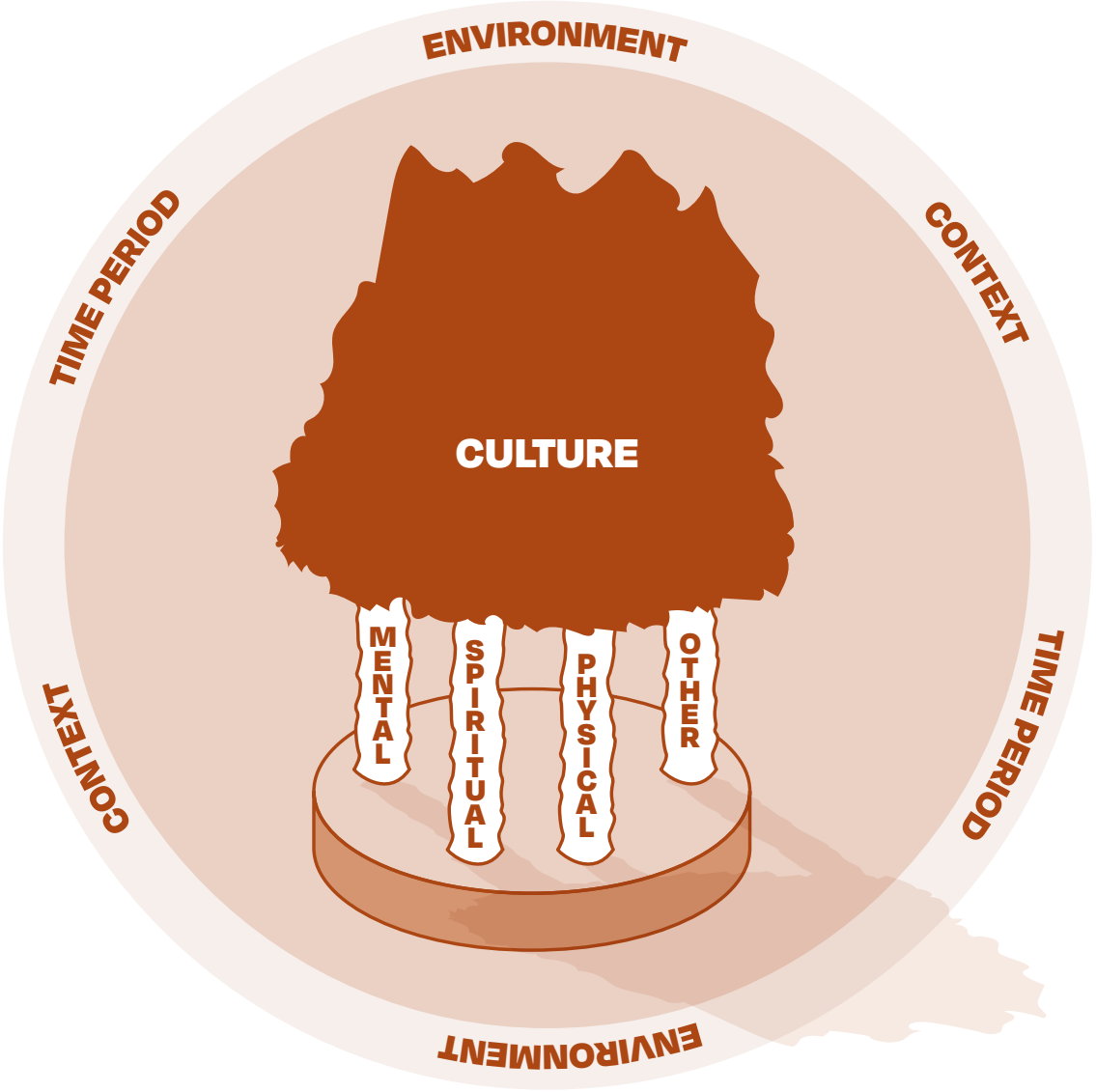
Fakalelei is similar to ifoga but less formal and is adaptable depending on the time, context and other circumstances. The literal translation for 'fakalelei' means 'to mend, repair, improve, to reconcile' and is practiced in Tongan communities with the same principles of humility, respect, apology and seeking forgiveness.

Ho'oponopono literally translates as "to make right". Expert Dr Michael Ligaliga distinguished between setting something right and making something right, suggesting that "making" something right promotes ownership of the process.[171]

Careful consideration of the values and principles that underpin these cultural practices is essential in considering a new redress process that seeks to heal and restore the vā.

The multicultural nature of Pacific communities in Aotearoa New Zealand means that these cultural practices need to be adapted and reappropriated. Care must be taken in determining which mechanisms to use, and/or whether to use them at all.[172]

Diagram Two: Fonofale Model



173

"E sui faiga ae tumau fa'avae"

Our practices may change but the values and foundations of the cultural traditions remain.[174]

Te tauira Fonofale me te "ahurea māhaki"
The Fonofale model and "cultural humility"

Several cultural frameworks have been developed to describe Pacific views on different areas including health, wellbeing, education and family violence. Earlier Pacific models of health and wellbeing (especially the Fonofale model) have been built into the frameworks of various Pacific and mainstream health services.[175]

It is not possible to have a one-size-fits-all redress process for Pacific survivors, because of the changing population, demographics, and beliefs and value systems of the children of the Pacific diaspora in Aotearoa New Zealand. However, Pacific experts spoke to us about the Fonofale model, as well as concepts of "cultural humility" and restorative justice as central features of any new redress process for Pacific survivors of abuse in care.[176]

The Fonofale model adopts the metaphor of a Samoan fale, or house, and includes elements from many Pacific nations including the Cook Islands, Niue, Fiji, Tokelau and Tonga.[177]

The foundation of the fale represents family, providing support for the entire fale structure. Family is generally seen as the foundation for all Pacific Island cultures. The roof represents cultural values and beliefs and acts as the shelter of the family for life.[178]

Between the roof and the foundation are four pou. Each pou represents a fundamental element of a person's wellbeing:

- spiritual – a person's spiritual sense of wellbeing, which stems from a belief system that includes either Christianity or traditional spirituality relating to nature, spirits, language, beliefs, ancestors and history, or a combination of both
- physical – a person's biological or physical wellbeing, the anatomy and physiology of the body as well as physical or organic and inorganic substances such as food, water, air and medications that can have either positive or negative impacts on the physical wellbeing
- mental – the wellbeing or the health of the mind which involves thinking and emotions as well as the behaviours expressed
- other – other variables that can directly or indirectly affect health such as gender, sexuality/sexual orientation, age, and socio-economic status.[179]

The fale sits inside a cocoon that contains three further elements that influence a person's wellbeing:

- the environment – the unique relationships Pacific people have to their physical environment, which may be a rural or an urban setting
- time – the actual or specific time in history
- context – the where/how/what and the meaning it has for that particular person or people, including whether they were raised in Pacific Islands or Aotearoa New Zealand, their country of residence, and the legal, political and socio-economic context.[180]

The Fonofale model reminds us that it is important to consider context, environment and time when trying to understand the wellbeing of a person.[181] For example, a Pacific survivor of abuse that occurred in 1950 may not find a 1950 resolution useful when seeking redress in the present. Addressing the survivor and their family's current needs is what will make the difference.[182]

"Cultural humility" is another key concept relevant to how we approach redress. Pacific criminologist Dr Tamasailau Suaali'i-Sauni highlighted that all of us – as the society of Aotearoa New Zealand, and Pacific peoples in Aotearoa – need to develop cultural agility and humility to enable us to navigate our many challenges.[183]

Dr Jean Mitaera, described "cultural humility" as "the ability to be able to stand and have a consciousness of the other."[184] She told us that in the context of abuse in care, a cultural humility approach invites the State and churches to stand and have regard for Pacific peoples in care, in coming up with a resolution that is transactional, transformative, but importantly, has regard for the differences and needs of all.[185]

Cultural humility focuses on both individual and organisational accountability, lifelong learning and critical reflection, and reducing power imbalances. It makes clear the interaction between the institution and the individual and the presence of systemic power imbalances.[186]

These models and frameworks can work together in a broader framework for redress, provided they are put in place in a way that is culturally inclusive of the diverse Pacific cultures and suitable to the particular survivors' needs. Holistic Pacific models of care that include Pacific values must be used to ensure Pacific mental health and wellbeing.[187]

Kaupapa tika hauā - Disability rights concepts

Disability communities emphasise the importance of challenging ableism in society, valuing diversity and being aware of difference. Assumptions about the interests and capabilities of disabled people, or ignoring their experiences, leads to invisibility. These assumptions continue to be made about the interests and capabilities of disabled people without communicating or seeking to understand them as individuals.

Exposing this ableism is essential to restoring the mana and wellbeing of disabled survivors. This includes addressing social, environmental, and systemic barriers that exist for disabled people, rather than seeing disability as a problem that needs to be cured or contained.[188]

Part of restoring mana for disabled people, and removing the barrier of invisibility, is seeking to understand them as individuals, or the perspectives of the groups they belong to. It includes respecting disabled people as part of human diversity. It recognises that changes may be needed to recognise this diversity and ensure they can participate in all aspects of community life and all levels of decision-making.

Care and support systems, whether for restoration for past abuse, recovery from mental distress, or for enabling better lives, are needed, as are systems for keeping people safe. To ensure abuse is not repeated, the systems that enabled it need to be transformed. These changes would ensure the inclusion of disabled people and allow them to meaningfully participate in various aspects of community life.

Some phrases used by the disability community to describe their experiences and transformative change are:

- "Out of sight, out of mind" describes the worst aspect of the invisibility of disabled people being segregated into institutions, hospitals, group homes, special schools and units, day services and sheltered work environments.
- "Who I am is okay, what happens to me is not" reflects the social rights model. Diversity of impairment, like gender or ethnicity is normal. Ableism is not. Ableism includes what the Deaf community names as audism, the mental distress community names as stigma, and the neuro-diverse community names as neuro-typicalism. Ableism, whether intentional or not, should be challenged.
- "Know me before you judge me" calls to end stigma and ableism, particularly for people who experience mental distress.
- "Leave no one behind" recognises some people are at much greater risk than others, for example, people with unique forms of communication who can only be understood by those who know them well. Those peoples with intersectionality, such as those at risk of sexism or racism along with ableism, may be most at risk. Inclusion involves seeking out, listening to, and acting on the forgotten voices.

The main priority for many disabled people who have experienced abuse or neglect is not their own direct benefit, but to contribute to better lives for others, free from the abuse they experienced.

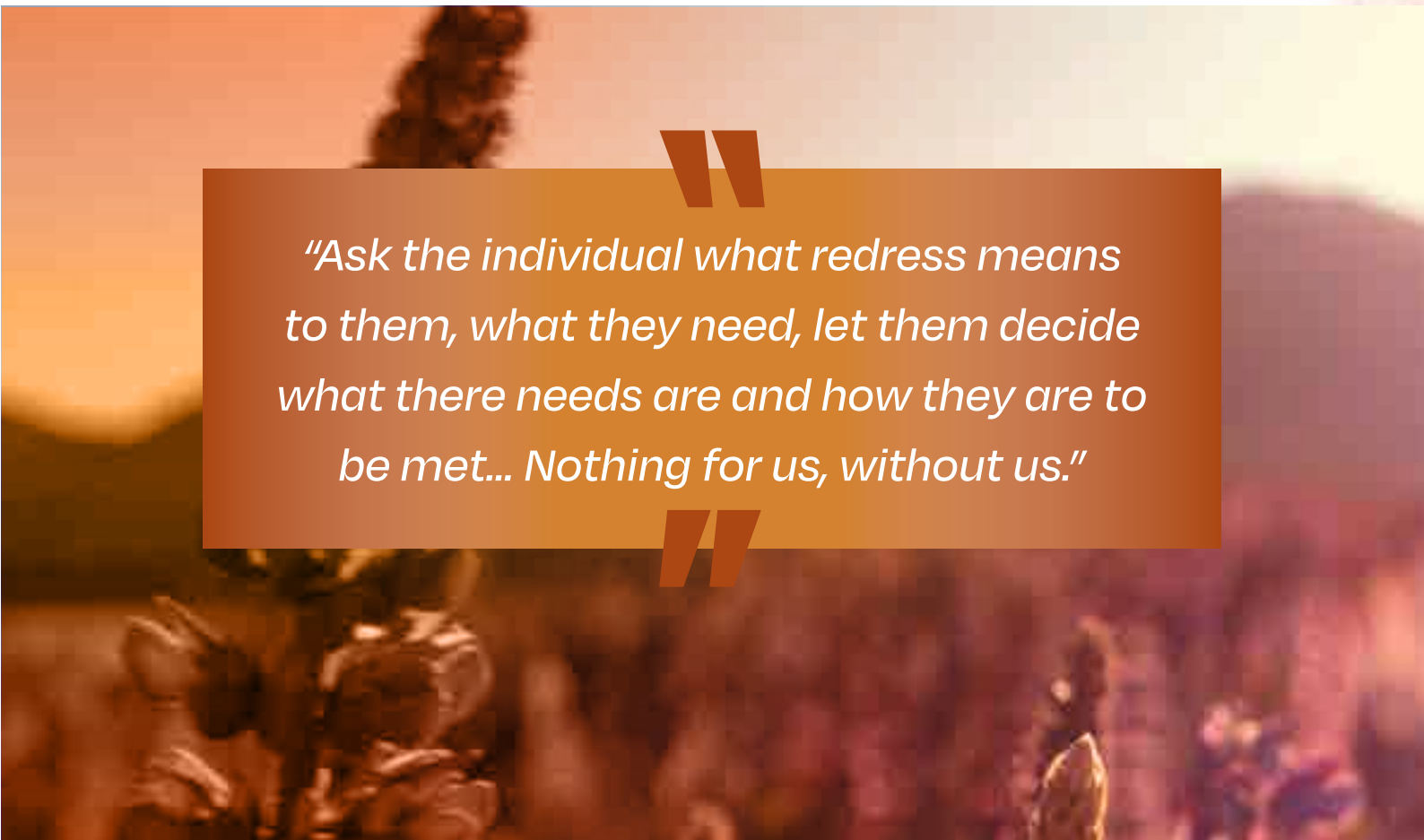
Ētahi atu mātāpono e hāngai ana ki te puretumu torowhānui
Other principles relevant to puretumu

Other values that have guided our approach to puretumu torowhānui include universal values of fairness, transparency and accountability.

To be fair and equitable, every person abused in care must have a fair opportunity to obtain puretumu torowhānui. This means it must be accessible no matter the circumstances of the person. To achieve this, we need to actively counter the social conditions that create particular barriers for some people in seeking puretumu torowhānui, including ableist structures and attitudes. Fairness also means that people receive puretumu torowhānui that is consistent between person to person and from year to year, while also having the flexibility to respond to individuals' needs, including their cultural needs.

Decision-makers and processes should be transparent, that is open and accountable to the people affected by decisions. This ensures fairness, and allows people to trust the decision making.

We are also guided by the need to be trauma-informed in responding to survivors of traumatic experiences such as abuse in care. This requires us to recognise all the impacts of trauma on way survivors experience the world, and to respect the autonomy of survivors, including in choosing their own path to restoration.



"Ask the individual what redress means to them, what they need, let them decide what there needs are and how they are to be met... Nothing for us, without us."

Te tikanga o te mōhio ā-pāmamae
What it means to be trauma-informed

Trauma has neurological, biological, psychological, spiritual, social and cultural impacts. Many survivors find talking about their abuse traumatic and distrust authority. Anyone working with survivors must be sensitive to the impacts of trauma and not do further harm. The trauma informed approach asks what has happened to someone, not what is wrong with them. A trauma-informed approach for Māori in particular would need to be supportive of whānau, hapū, iwi and hapori, or communities, consider intergenerational and historical trauma, and recognise and provide for a te ao Māori worldview and Māori healing concepts.[189]

Trauma-informed care treats people with manaakitia kia tipu – nurturing of people so that they can prosper and grow. It includes treating people with atawhai, or kindness humanity, compassion, dignity, respect and generosity in a manner that upholds their mana. The quality of the relationship that a survivor has with those trying to help them is crucial to their healing – it can facilitate a feeling of safety and security and a survivor's ability to have hope and trust.[190]

Trauma-informed care also requires respect for the autonomy of survivors – including scope for survivors to choose their own pathway of utua kia ea. Survivors should have control over how, when, in what form, and to whom they disclose abuse.[191] They should be empowered to make their own decisions about what works best for them in their healing. A trauma-informed approach to puretumu is collaborative decisions are made with a survivor and not for them.[192]

1.4 Ngā here mō te whakatutuki i te puretumu
Obligations to provide redress

The Government has obligations under te Tiriti o Waitangi and international law to provide redress in many cases of abuse in care.

Ngā here i raro i te Tiriti o Waitangi
Obligations under te Tiriti o Waitangi

Te Tiriti o Waitangi, signed in 1840, is an agreement between iwi and the Bristish Crown. It paved the way for further settlement of British citizens. Te Tiriti provides for two spheres of authority – kāwanatanga, or governance, and tino rangatiratanga, or self-determination – which must co-exist as part of an ongoing relationship between the parties to te Tiriti. In areas that overlap the Crown and Māori need to negotiate how they will work together. The Waitangi Tribunal explains that through kāwanatanga the Crown gained the right to make laws and govern, which was initially for the principal purposes of controlling settlers and settlement and managing foreign relationships, adding:

> *"This power is qualified by the rights that are reserved to Māori. To the extent that it affects Māori communities, the right of kāwanatanga must be used to protect Māori interests."*[193]

The Tribunal explains that Māori communities retain their tino rangatiratanga, which included "their right to autonomy and self-government, and their right to manage the full range of their affairs in accordance with their own tikanga".[194]

The guarantee of tino rangatiratanga provides that Māori keep full authority over their own affairs. This includes, among other things, rights to exercise social, cultural, economic, political, and spiritual authority; to self-government and self-determination; to exercise tikanga; to maintain kinship ties, manage internal and external relationships, protect the tribal base, and advance the wellbeing of the hapū and other hāpori; and, as noted above, to raise and care for the next generation to be "happy, healthy and grounded in te ao".[195]

The Tribunal found, in its inquiry into Oranga Tamariki, that the guarantee of rangatiratanga was a comprehensive guarantee which the Crown has systematically breached over many generations since 1840, including through its treatment of tamariki Māori in care.[196]

Treaty principles have been developed by the Crown, Courts and Waitangi Tribunal to assist with the interpretation and application of te Tiriti today. The principle of partnership emphasises a duty on the parties to reasonably cooperate. Wherever Māori and Crown interests intersect or overlap, ongoing dialogue and negotiation is required, and both partners must make a genuine effort to work out agreements over issues arising between them and accord each other respect in their interactions.

Where Māori interests are affected, as they are with respect to Māori in State or faith-based care, the Crown cannot impose its will on Māori, nor limit Māori involvement to mere consultation; rather, it must acknowledge Māori rights to either exercise self-determination or at least share in decision-making.[197] Underpinning the partnership is a shared obligation for both parties to treat each other well, acting reasonably, honourably, and with the utmost good faith.[198]

The principle of active protection provides that the Crown must actively protect Māori rights and interests. This includes Treaty rights such as those relating to the wellbeing of tamariki and the future of the tribal base. The Crown cannot cause harm, nor stand by while harm is done. Rather, it must take all reasonable steps to protect Māori and Māori rights and interests.[199]

The principle of equity requires the Government to act fairly between Māori and non-Māori. The Waitangi Tribunal's report – He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry – made the important distinction that the fundamental requirement for te Tiriti / Treaty consistency is not equity in terms of relative rates of entry into State care or equity of funding to run a care and protection service. Rather, "te Tiriti/the Treaty consistent objective is recognition and restoration of rangatiratanga over kāinga, which in turn means strong, connected whānau looking after their own tamariki and thriving as Māori."[200]

All of these principles are relevant to any assessment of the tūkino that must be put right, the nature of puretumu torowhānui, or holistic redress, and restoration that must be provided, and the process by which any puretumu torowhānui scheme is designed and delivered.

Both the courts and the Waitangi Tribunal have recognised that it is a principle of partnership generally, and of te Tiriti relationship that past wrongs give rise to a right of redress. It provides that Māori are entitled to redress for any government actions that breach the guarantees and principles of te Tiriti – including breaches relating to the removal of people from their communities, the design and delivery of care, and the impacts on Māori as individuals, and as part of a whānau, hapū and iwi.

The High Court has described the right of redress as a right to "fair and reasonable recognition of, and recompense for, the wrong that has occurred".[201] The Tribunal, meanwhile, has described the principle more broadly as creating a duty for the Government to "restore the honour and integrity of the Crown and the mana and status of Māori".[202] Several Tribunal reports have recommended a restorative approach, involving recognition of the mana and tino rangatiratanga of the hapū or iwi that has been wronged.[203]

For many Māori, restoration of tino rangatiratanga over whānau, hapū, iwi and kāinga is seen as a critical step towards any effective redress for abuse in care. The Tribunal Report He Pāharakeke, He Rito Whakakīkīnga Whāruarua was also of this view, finding that effective redress for the removal of Māori children from their whānau and whakapapa would involve steps to address systemic racism, restore tino rangatiratanga to Māori communities and kāinga, and strengthen and restore whanaungatanga.[204]

The Catholic Church, Anglican Church and The Salvation Army have enduring relationships with Māori whānau, hapū, iwi and hapori or communities. Catholic and Anglican missionaries were among the first Pākehā settlers who built relationships with Māori communities and encouraged Māori to seek the protection of the British Crown. As settlement continued, all three churches played a significant role in providing schooling, childcare and welfare services. Some whānau, hapū, iwi and hapori, or communities, came to rely on this support and many ministers held positions of great mana in these communities. All three churches still have large Māori congregations.

Te Tiriti o Waitangi is often acknowledged as the cornerstone of our society. Faith-based institutions do not have the same obligations to Māori as the Crown does as a Treaty partner, although most – including entities relating to the Catholic Church, Anglican Church and The Salvation Army – have policies that emphasise their commitment to biculturalism and recognise te Tiriti o Waitangi. Some of the Treaty policies adopted by these faith-based institutions are prominent and detailed. The Salvation Army has committed to honouring the principles of partnership, protection and participation inherent in te Tiriti o Waitangi. However, the overall approach to te Tiriti by faith-based institutions varies and in some cases the commitment seems weak.[205]

Despite not having formal obligations under te Tiriti, the faith-based institutions played a significant role in colonisation in Aotearoa. The churches continue to have a strong moral obligation to Māori, partly because of their history in Aotearoa and relationships with Māori, and partly because of their self-imposed te Tiriti policies.

Most faith-based redress processes have not enabled Māori governance, input or

leadership, yet they emphasised their commitment to Māori and te Tiriti o Waitangi, and significant numbers of Māori have been abused in their care. This contributed to the lack of culturally informed redress available for survivors.

Ngā here tuku puretumu i raro i ngā ture o te ao
International law obligations to provide redress

Human rights are fundamentally important in any society. They recognise that every person, regardless of who they are or where they live, has inherent value and dignity. They include a wide range of rights and freedoms to protect against abuse, ensure people have equality and autonomy, and can access what they need for their wellbeing. Human rights are inalienable, meaning they cannot be taken away. The United Nations Declaration of Human Rights recognises that over the course of history disregard and contempt for human rights has resulted in barbarous acts which have outraged the conscience of humankind.

International law recognises human rights in a range of treaties that the New Zealand Government has signed,[206] and the right to redress for violations of human rights.[207] Failing to provide effective redress may itself amount to a human rights violation.[208] Redress must be accessible and effective, and take into account special vulnerabilities.[209] Numerous organisations emphasised to us the range of Aotearoa New Zealand's human rights obligations, and we are in no doubt that international law requires redress for survivors of abuse in care, and that the nature and provision of that redress must also comply with human rights obligations.

The United Nations Human Rights Committee says redress or reparation generally entails compensation, but it can also involve restitution, rehabilitation, public apologies, memorials, guarantees of non-repetition (which can include law changes), and bringing perpetrators to justice.[210] The United Nations Committee Against Torture has adopted a similar definition.

The United Nations Declaration on the Rights of Indigenous Peoples covers a range of human rights as they apply to indigenous peoples, including rights to life, physical and mental integrity, liberty and security of person, and the right to live as distinct peoples free from acts of violence, including the forced removal of children. The Waitangi Tribunal has said the declaration has "significant normative weight"[211] and can be considered when assessing the Crown's obligations under te Tiriti o Waitangi.[212]

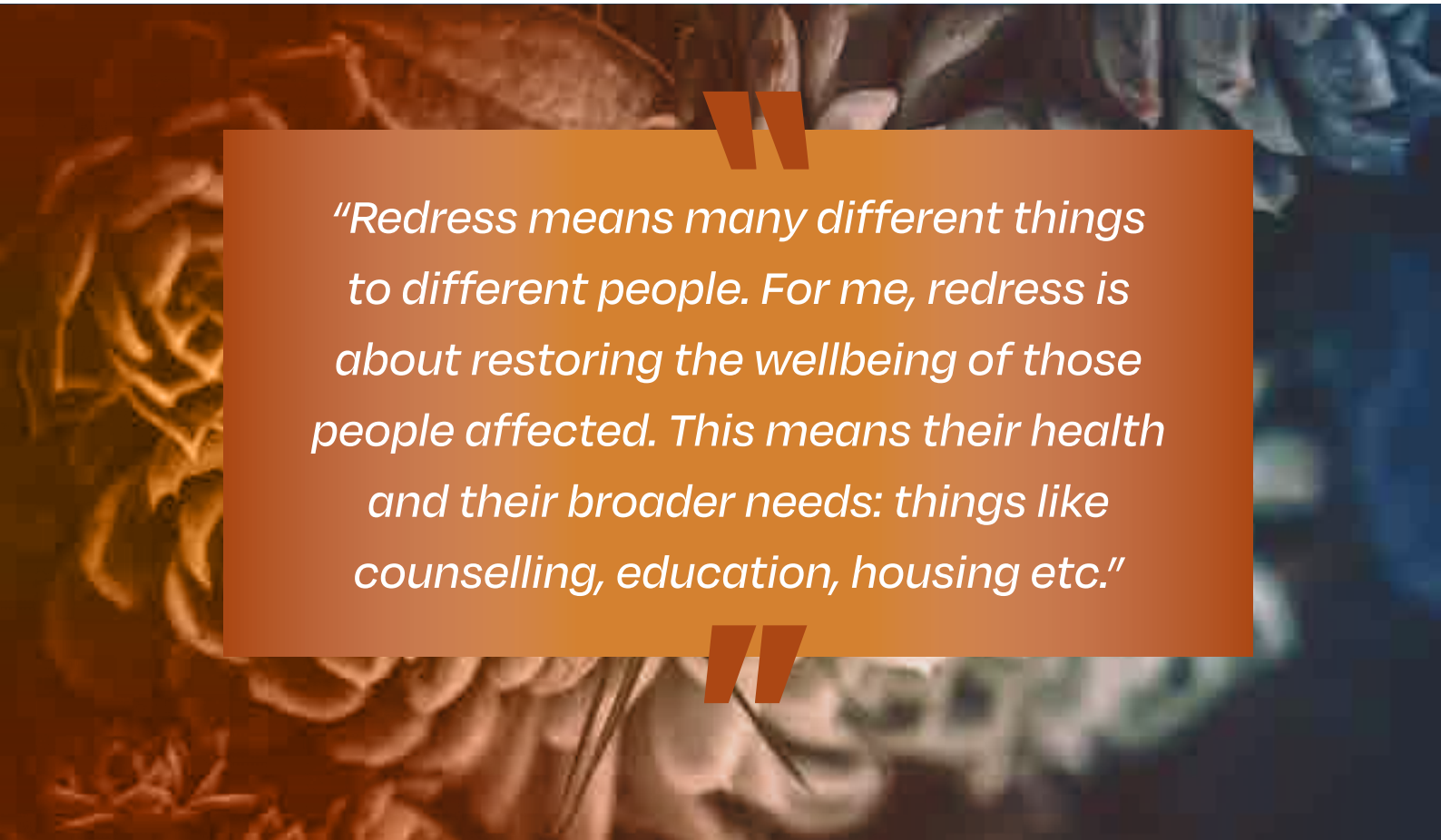
The declaration also says indigenous peoples have the right to participate in decision-making on matters affecting their rights, and also the right to develop their own decision-making institutions. Article 19 says signatories should consult and co-operate in good faith with indigenous people through their representative institutions in order to obtain their free, prior and informed consent before adopting

and implementing administrative or legislative measures that may affect them.

The United Nations Convention on the Rights of Persons with Disabilities sets out specific rights and obligations regarding redress for the abuse of disabled people and prevention of abuse. States must take all appropriate measures to promote the recovery, rehabilitation and social reintegration of those with disabilities who are victims of any form of abuse.[213] Signatories must also have effective laws and policies to ensure they identify and investigate abuse against people with disabilities and, where appropriate, prosecute those responsible.[214] In addition, they must provide information and education about how to avoid, recognise and report abuse.[215]

Human rights law requires the process of obtaining redress to be accessible, which means ensuring effective support and assistance is available to survivors, including those with disabilities. The Convention on the Rights of Persons with Disabilities and the United Nations' guidance on access to justice for people with disabilities highlight this point.[216] Disabled people must have equal access to redress without discrimination and on an equal basis with others.[217] This includes access to information, means of communication, physical environments and other facilities and services available to the public. It also includes access to lawyers and advocates trained to work with disabled people.[218]

Any redress scheme needs to take account of barriers that may prevent disabled people from seeking redress or disadvantage them in the process. Disabled people must also be closely consulted and actively involved in decisions about redress legislation and policies that affect them.[219]



"Redress means many different things to different people. For me, redress is about restoring the wellbeing of those people affected. This means their health and their broader needs: things like counselling, education, housing etc."

1.5 Ngā kawatau o te puretumu
Expectations of redress

Expectations of – and needs for – redress vary between individuals, whānau and communities. First and foremost, we have spoken with survivors about what they want and expect in order to set right the tūkino that they have suffered.

But as discussed above, abuse in care has affected far more than individual survivors. It has also had a profound impact on their whānau, whole communities, particularly Māori, Pacific and Deaf and disabled communities, but also Aotearoa New Zealand society as a whole. Survivors and their whānau, advocates, and experts from these communities have also spoken to us about what these communities particularly need and expect in order to put right the tūkino that was caused in care.

Kawatau purapura ora - Survivor expectations

The Network of Survivors of Abuse in Faith-based Institutions told us that survivors will seldom use the term "redress", but when survivors call for "justice", "acknowledgement", "an apology", "making sure the abuse stops and what happened to them does not happen to others" and "compensation", they are calling for redress.[220] Many have shared with us the measures they would like to see to restore their lives, their mana, and the mana of the whānau, hapū, iwi and hapori, or communities.

Many told us that monetary payments alone were not enough to meet their needs or restore their lives. On the contrary, when agencies provided monetary payments without meaningful effort to support reconciliation or healing, this could lead them to feeling dismissed and re-traumatised.

Many survivors want to see justice and accountability in the form of apologies for, and other public acknowledgement of, the immense harm that was done to children and young people in State and faith-based care. Almost all survivors emphasised the need to ensure that what happened to them did not happen to any others. This was the most important part of seeking justice for some survivors.

> *"I wanted to do all I could to prevent other young girls experiencing sexual abuse."*[221]

Many want measures to suit their individual needs, to help address the harms

they have suffered, including connection and reconnection with their culture and whakapapa, counselling, psychological care, medical treatment, and assistance with housing and education.

As one survivor explained:

> *"Redress means many different things to different people. For me, redress is about restoring the wellbeing of those people affected. This means their health and their broader needs: things like counselling, education, housing etc. An overall package needs to be developed to look at the wellbeing of those historical victims. The package could include mechanisms for accessing personal records, and access to restorative justice-type processes."*[222]

Survivor Mary Marshall told us:

> *"Survivors are individuals not a mass, faceless lump of victimised humanity to be fobbed off with a generalised paltry amount of money, coupled with an apology for damages incurred … There can be no one-size-fits-all branding of survivors, we are individuals and each survivor has experienced suffering in all forms – mental, physical, cultural, social etc."*[223]

Another survivor shared his vision with us:

> *"A wraparound approach would be far more helpful for me. For myself, financial compensation so I can have my own home. Treatment for my ADHD. A life coach who could assist me with … getting an education so I can have a fair go at getting a job … An apology is important, but not just a "sorry", also an acknowledgment that the failures made by the Church and the State when they were looking after me led to drastic consequences that affected me and others my whole life. The system that was supposed to protect me and nurture me into a constructive citizen of society, failed me in so many areas. It needs to take responsibility for its part in making my life so disastrous."*[224]

Similarly, Anne Hill told us that she and other survivors needed "wraparound support for life", reflecting the fact that "our childhoods were taken [and] we must live out our adult lives without achieving our full potential".[225]

On the other hand, financial compensation is still a very important part of redress for many survivors who are struggling to support themselves and their whānau:

> *"I feel very passionate about survivors being compensated for what they endured in State care … although no amount of money will ever erase what has occurred to survivors it helps a little."*[226]

One survivor said:

> *"To be honest ain't nothing gonna change what happen to me. However, being offered a substantial amount of money and services, will help to move on, financial stability of a sum of money would help me so much."*[227]

Another survivor told us that she wanted:

> *"[an] apology from them … But a sincere one … A real sincere one. And … I don't know if it sounds selfish but money, money for our struggle … 'Cause we've struggled so much and I'm still struggling."* [228]

For many survivors, the most important thing is to see system change, to ensure that abuse will not happen to others in the future:

> *"So as a mōrehu [survivor] you want me to tell you my story and you want me to heal myself, and really the question is, isn't [it] the system that needs to be healed?"*[229]

Several survivors said there should be independent processes for receiving and responding to allegations of abuse, so institutions could not hide or minimise what had occurred. Frances Tagaloa said it should be mandatory for allegations of abuse in care to be reported to an independent authority for this reason.[230]

A common theme among survivors was that they lacked confidence in institutions to prevent abuse of other children or vulnerable people. This reflected their past experiences of abusers being protected even after the abuse was disclosed.

Significantly for moving forward, many survivors have told us that they want to be involved in the design of any redress processes, to ensure that those processes are appropriate for their cultural and individual needs.

Survivors told us they want any new redress scheme to be responsive and transparent, and to take a person-centred and whānau-centred approach aimed at restoring lives so far as that is possible.

> *"We're people, not problems to be dealt with as if we're on a conveyor belt. Pay us off, problem solved, pay us off, problem solved. Effective redress should mean so much more than a cash payment."*[231]

Te tēpu puretumu - The redress roundtable

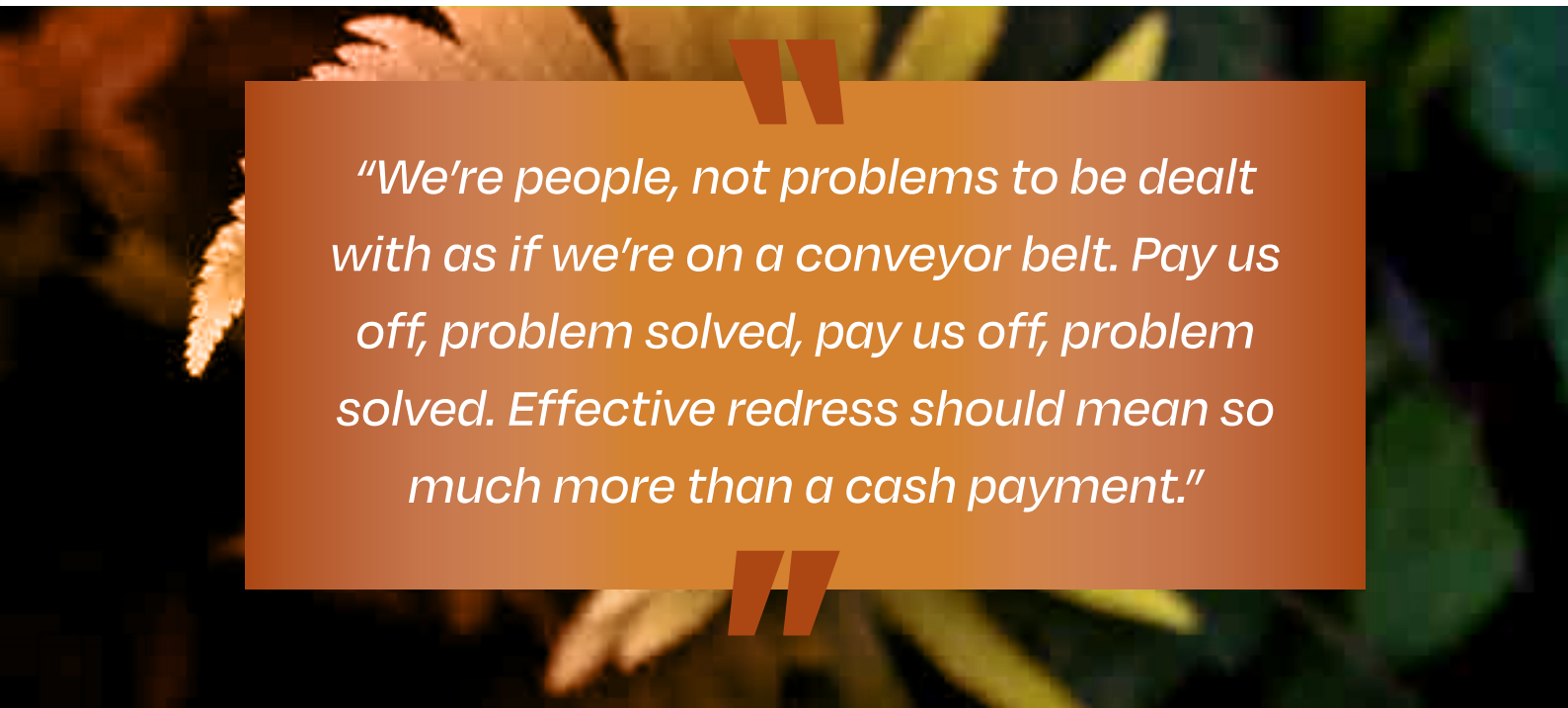
We held a roundtable meeting to discuss what effective and meaningful redress for survivors might look like. Insights from participants included that any scheme should have te Tiriti at its core and be designed to include a 'by Māori, for Māori' approach that is well-resourced. There was a need to ensure that pathways to, and through, a redress scheme were available for Māori survivors, but also for Pacific survivors and Deaf and Disabled survivors, as well as survivors with mental health needs.

Most participants agreed that a redress scheme must be survivor-led at all levels, from design, to governance and support. This includes believing survivors, being trauma-informed and providing holistic support for people and communities affected by abuse in care. Being survivor-led also means being inclusive and providing a safe space for all survivors and their whānau.

Many participants spoke of a need to ensure that the collective impact of abuse is recognised – this could include providing redress to whānau members, multiple residents of an institution or communities, hapū and iwi.

Participants, like survivors, felt that a key part of redress was preventing future abuse from occurring, as was the need to hold institutions and systems to account.

Most participants agreed that restoration and healing should be central to any redress scheme, for survivors, their whānau and communities. When discussing restoration, most participants felt that this would include tangible elements such as payments or services, system changes to prevent abuse, appropriate record keeping, and the development of prevention and public education programmes. Other crucial elements included te mana tāngata, exercising tino rangatiratanga, wrong doers being held to account and public accountability processes also being in place, connecting and reconnecting to whānau and whakapapa, and self-agency.



"We're people, not problems to be dealt with as if we're on a conveyor belt. Pay us off, problem solved, pay us off, problem solved. Effective redress should mean so much more than a cash payment."

Kawatau Māori – tino rangatiratanga me te whakahaumanutanga o te mana me te oranga
Māori expectations – tino rangatiratanga and restoration of mana and oranga

We explored the notion of "redress" and restoration, from a te ao Māori perspective through several mechanisms, including private sessions and interviews with Māori survivors, hui with our pou tikanga, iwi leaders, online wānanga and hui and through a kaupapa Māori research project. Our work investigating this area is ongoing and will be addressed in more detail in a future report.

From these engagements, participants were consistent in their messages that Māori need to be resourced to exercise their tino rangatiratanga in the development, design and implementation of any potential scheme, and that a scheme should be survivor centred, intergenerational and whakapapa focused, tikanga based, and framed not as "redress" but as a commitment to providing justice, restoring mana and oranga and empowering whānau. Many described the need for an inclusive, culturally responsive process, with some advocating for a separate process for people who wish to choose a te ao Māori approach. This is consistent with the concept of te mana tāngata.

As with survivors generally, the term "redress" did not resonate with many Māori. Rather they said:

> *"[I]t's about empowering whānau, it's about empowering whakapapa and restoring balance, because of the connotations that come with the idea of redress being more of a monetary transaction and not necessarily reflecting Te Ao Māori."*[232]

Any scheme must therefore include more than pūtea or financial compensation. Rather, we heard that the foundational principle of any scheme should be utua kia ea – to account for tūkino and restore mana to achieve a state of restoration and balance. This means healing for survivors and their whānau needs to be at the heart of any process. It must recognise and acknowledge the tūkino suffered, provide the right support and resources for survivors to restore their mana and mauri, and connect or reconnect with their whānau, whakapapa and mātauranga Māori.

The kōrero was clear that we should be focusing on "what is necessary to restore the mana of Māori taken and abused in State or faith-based care and their whānau, hapū, iwi and/or hāpori". Reframing "redress" in this way reflects the greater breadth and depth of individual and collective justice and healing needed. To be supported by a "mana-enhancing" system would enable the transformation of the lives of survivors and their whānau.

When asked about the role of Māori in the design, establishment and implementation of a new puretumu scheme, participants and survivors were clear that Māori needed to be leading all processes, "it should be Māori led, Māori designed, and Māori run".[233] Whānau, hapū, and iwi need to be involved, and at the decision-making table, from the very beginning:

> *"We're talking about Māori mana motuhake as it means to us in terms of whānau, hapū and iwi, where it means our taking our rightful place in our country and being responsible and being participatory in everything to do with the decisions that are made about us in our country.*
>
> *"Whānau, hapū and iwi need to be leading [any redress process] because they have the mana, tino rangatiratanga, and duty to care for their own; a duty sourced from whakapapa."*
>
> *"– we are the kaitiaki of our tamariki and our mokopuna. Full stop. We don't need anybody else's authority to tell us what to do, but we would appreciate their help, to help us do what we want to do. For our families, our whānau, and our hapū."*[234]

We also heard that any scheme must also be led by survivors. This means survivors will determine what restoration of mana means for them, how that happens, and who is involved.[235]

Participants also confirmed that a survivor-centred approach needs to reflect tino rangatiratanga, or right to self-determination, and mana motuhake, the ability to manage own affairs, and that it is critical Māori survivors have a voice and are empowered in a new puretumu scheme.

> *"... one principle that came out of our breakout session was this; nā te mōrehu te mana. Translated, nā te mōrehu, by the survivor; te mana, the mana. Meaning, it could be interpreted several ways, one of which is it's to be led by the survivor."*[236]

Participants said that survivors should be supported in connecting and reconnecting to their whānau, hapū, iwi, hāpori and their whakapapa if that's what they want, as part of their journey towards the restoration of their mana and oranga.

Ultimately, we heard that solutions will be different for each survivor and their whānau, hapū, iwi and hāpori. Survivors must be supported in dictating and leading their own kaupapa and must be resourced to do so.

We also heard that intergenerational healing is needed. The tūkino suffered by a survivor also affects their whānau, hapū and iwi. Repairing the tūkino and restoring balance, therefore, also needs to focus on the the oranga of whānau, hapū, and iwi.

"[T]he paramountcy or the wellbeing of our whānau actually hasn't been the focus and in many ways that has been breached and its impact has been severe, not just on the individual, because when our tamariki are abused in places where they are meant to feel safe, it is felt intergenerationally. It is an abuse on our whakapapa."[237]

During one of the engagement hui hosted by the Kīngitanga, we also heard the following views:

"How should tikanga be incorporated into the scheme? Tikanga is the scheme."

"[T]he tikanga is, He aha te me nui o te ao? He tāngata, he tāngata, he tāngata. You would start with their voice, their mamae … therefore your system is derived from them, derived from the outside, and therefore the management, the measures that you use for the success of that system comes from them, because anything else is abstract."

"How should tikanga be incorporated in a redress scheme? Boy, we had a huge kōrero on that one. There's tikanga Ngāti Porou, there's tikanga Waikato, there's tikanga Te Arawa, and there's also something called tikanga whakapono. How should tikanga be incorporated in a redress system? Tikanga is about relationships, and things will flow from those relationships."[238]

We heard that tikanga Māori is also about "doing things right". The appropriate tikanga will vary, not only from iwi to iwi, but also for each survivor, and their whānau, and hapū. Any scheme must take this into account and be flexible to allow for different parties to work within their own tikanga.

Kawatau o ngā uri o Te Moana-nui-a-Kiwa: te whakamahu i te vā
Pacific peoples' expectations: healing the vā

We explored the notion of a Pacific-oriented approach to "redress" at our public hearing into Pacific peoples experiences this year.[239] Our work investigating the needs and experiences of Pacific survivors is ongoing and will be addressed in more detail in a future report.

We heard that a Pacific-oriented approach to redress, like any approach to redress, should be guided by the survivor. The approach must also take into account the diverse ways in which people are Pacific.[240] The way Pacific survivors orient themselves or connect to their ethnicity or culture must be taken into consideration,[241] without making assumptions as to their preferred type of redress.

Dr Jean Mitaera explained:

> *"I think that we need to ask [survivors] "what's going to work for you", and we need to sit down and explain different processes and let them choose ... let them be designers of the process that they're going to go through ... it might be that (survivors) might want two or three things from different cultures. And ... that reflects their reality."*[242]

Pacific survivors, witnesses, family members, community leaders and experts have made it clear that there has been a lack of regard for Pacific concepts and principles in existing State and faith-based redress processes, and there is a need to urgently transform redress processes to incorporate Pacific cultural values. One Pacific expert told us that a "holistic approach that encompasses genuine Pasifika worldviews must be prioritised, despite the dominance of western, Eurocentric and individualistic models of society in Aotearoa New Zealand".[243]

From Pacific perspectives, "redress" can be understood as a form of restoration or restitution. For many Pacific survivors, it is about restoring the vā that was violated or lost and restoring the damaged relationships. Anything that was taken away is to be restored in its purest form, as close as possible.[244]

Redress for Pacific peoples needs to reflect the Pacific worldview in that it needs to be holistic, collective and relational. This can be achieved by drawing on models and frameworks such as the Fonofale model and "cultural humility" framework, that recognise the holistic nature of the Pacific worldview and key Pacific concepts and principles.

> *"In terms of Pacific redress, it has to reflect the people, it has to breathe, we cannot just rely on structures."*[245]

Pacific survivors told us they wanted to see accurate ethnicity recording. Expert witness, Dr Seini Taufa, emphasised the importance of accurately recording Pacific peoples' ethnicity and the need for ethnic specific recording by government agencies.[246] There is the added importance of ensuring that children of mixed Māori and Pacific heritage are accurately recorded.[247]

Some survivors talked about how inaccurate recording of their ethnicity misinformed their ethnic identity which directly impacted on their well-being. To avoid further harm, agencies and those responsible for the care of Pacific people need to be aware of the importance of ethnicity recording to Pacific identity and well-being.

Pacific survivors indicated that redress should be a healing process that is open, transparent, culturally relevant and appropriate. It should include a meaningful apology, and a focus on healing and restoration of the vā or relational space. One

expert told us that we should aspire to have a care system that is focused on young people embracing who they are holistically, their faith, their strengths, their weaknesses, their interests; this would encompass who they are as a people in their culture.[248] We were told that any new redress process should reflect the same principles and values.

> *"Language is the music of the soul"*[249]

Some Pacific survivors told us that a meaningful acknowledgement and apology would be important aspects of any healing process, and many wanted apologies to be not just to them, but to their families. Survivor William Wilson told us: "I think a genuine meaningful apology from Wesley College acknowledging what happened to me while I was in their care and an apology from those who abused me would make a bit of a difference."[250]

Ms CU said: "The Church should publicly apologise to victims and their families. This will go a long way towards showing other people that my (family member), and others like my (family member), are innocent and suffered due to the Church's actions and inactions. This should be done immediately."[251]

Some Samoan survivors advocated for the use of ifoga to create space for restoration and healing. For some survivors, being able to take part in a culturally appropriate process would be particularly significant, as their experiences in State or faith-based care had disconnected them from their culture.

Several survivors wanted a healing and restoration process that was independent, entirely separate from the organisations that perpetrated abuse. Others raised concern that any independent, unitary body responsible for redress might lack the cultural competence and sensitivity to effectively respond to and support Pacific survivors.

As expert hearing witness Folasāitu Dr Julia Ioane stated, "an understanding of Pasifika values is needed to guide, heal and continue with Tatala e Pulonga",[252] the lifting of the dark cloud.

We heard that a Pacific-orientated approach to redress requires systemic change. Folasāitu Dr Julia Ioane explained that "if we were to have a system that is to genuinely work with Pasifika, then a significant change is required at systems level".[253] Agencies, organisations, government departments must engage in the fundamental concept of the vā or tāuhi vā.[254]

> *"I stopped caring about who I was because I was stuck in a system that didn't care and so I stopped caring too."*[255]

Psychologist Dr Siautu Alefaio-Tugia told us that people behind any new redress processes will need to embrace "uncomfortable courage" in order to move beyond the status quo.[256] The "uncomfortability" experienced by survivors in coming forward to share their experiences demands that policy makers in both State and faith-based institutions be courageous in taking decisive steps for transformative change. Pacific peoples want and need to be involved in the design, establishment and implementation of any new scheme.[257] This will require State and faith-based institutions knowing how to establish empathetic relationships. As Sister Cabrini Makasiale said at the hearing, "you either have it or you've got to learn it".[258]

Puretumu mō ngā purapura ora Turi, hauā anō hoki
Redress for Deaf and disabled survivors

Deaf and disabled survivors and their communities have particular needs when it comes to redress. We held a hui on redress with Deaf and disabled people, whānau members, advocates and sector workers. We also held two wānanga with survivors, experts and community members to test our recommendations.[259]

Deaf and disabled survivors face significant barriers to accessing redress or, in some cases, even being informed and aware that redress is available. They often face a lack of support to communicate, mistrust of State and faith-based organisations, and challenges associated with navigating processes that are bureaucratic and adversarial in nature.

Many are in long-term care and are not provided with basic information about redress processes or help to navigate those processes.

Deaf and disabled survivors told us they wanted equitable access to redress, sufficient for them to "live a good life"; and that they also wanted to be involved in designing and delivering processes for healing, restoration and ongoing support.

"Nothing about us without us" has been a longstanding challenge levelled by disabled communities when demanding meaningful participation in decisions and reforms impacting their lives. We heard of the need for Deaf and disabled people and organisations to be involved in the co-design, governance and management of any new scheme for redress, which should include paid advisory roles. One survivor emphasised that disability communities should lead change: "we're capable of building something better".[260]

Other survivors and community members spoke about the need for any redress scheme to comply with the United Nations Convention on the Rights of Persons with

Disabilities. Many spoke of the importance of redress that is person-centred, holistic, and flexible enough to meet the specific needs of each survivor and their family and whānau. Survivors and stakeholders described this as "self-determination", as "mana enhancing", and as enabling people to have a good life, as they view it.[261]

In this context, survivors emphasised the diverse identities and needs of Deaf and disabled people, with their many experiences and impairment types. Similarly, survivors emphasised the diverse identities of disabled people in terms of culture, gender, and sexuality. To reflect this diversity, tailored responses are necessary.

We also heard that adequate resourcing is needed to properly inform survivors and ensure they can exercise genuine choice about the types of redress and support they access. Any redress scheme should meet people where they are, actively reach out and provide information and support to all survivors.

Deaf and disabled survivors must be in control of key decisions and some might need a supported decision-making framework to enable this. Others might need communication support, independent advocacy, legal advice, psychological support, peer or whānau support, or other forms of support. We heard that supports must be free, culturally appropriate and tailored to survivor needs.

Ensuring a redress scheme meets accessibility standards in relation to physical spaces, information provision and support provided was seen as a minimum to ensure Deaf and disabled people can access redress. Any scheme should also respond to service gaps, such as shortages of New Zealand Sign Language interpreters, mental health professionals for disabled people (particularly people with learning disability), specialised disability legal services and specialist pathways for people with complex needs.

Survivors also told us that any new redress scheme should be responsive, trustworthy, and independent of the agencies that had allowed abuse to occur.

Deaf and disabled survivors and communities overwhelmingly sought a broad approach to the types of abuse that are included in a redress scheme. This includes forms of abuse that are not always obvious or recognised – such as neglect, loss of family and ongoing relationships, restraint and seclusion, failure to provide adequate education, emotional abuse due to ableist treatment and language, lack of privacy, loss of culture and cultural abuse, and financial abuse.

We also heard about the importance of recognising the harm of multiple instances of abuse that may seem small, but ultimately undermine a person's sense of worth, self, and being.

Māori survivors who are Deaf and disabled spoke of the importance of connection or reconnection with their whānau and te ao Māori as part of any redress scheme, and

of restoration of mana and rangatiratanga consistent with te Tiriti o Waitangi. They also noted that their abuse and neglect was compounded by being both Māori and disabled. They suffered both racism and ableism.

We also heard that understanding is needed about the specific context of Deaf and disabled people who came to Aotearoa New Zealand from Pacific nations and who were placed in institutions in isolation from their home, culture, languages and communities. We were told that deinstitutionalisation has specific impacts on Pacific disabled people, including a lack of culturally appropriate supports, and that experiences of cultural abuse and neglect should be acknowledged in a redress scheme.

Unlike many other groups of survivors of abuse in care, many disabled people continue to be in long-term care arrangements, including residential/community-based care and receiving home-based support services.

Disabled survivors and communities emphasised that because of this, redress should be available for current and future experiences of abuse, not just historic claims.

We heard concerns that disabled survivors who received monetary payments could be subjected to financial abuse, and that there is a need to ensure that redress payments are not considered income or assets that might affect eligibility for income support payments or be used to repay debts or fund disability and aged care services. Rather, safeguards such as supported decision making should be in place to ensure disabled people can exercise choice and control over their entitlements.

We heard that redress should include financial support to meet the additional costs of living and support that disabled survivors face. We were told that in the absence of such support, many disabled survivors would continue to live in poverty.[262]

Survivors told us that redress should be available to individuals who experienced abuse, and to their families and whānau who had also been affected. They said that redress should be provided to Deaf and disabled communities as a whole, acknowledging their shared experiences – for example, community memorials or education programmes could be provided to acknowledge the institutionalisation and abuse of Deaf and disabled people.

Disabled people, family and advocates said, "leave no one behind". We heard that elderly and terminally ill survivors must be prioritised in any new scheme and that those with psycho-social disability or learning disability live 20-25 years less than others. Some disabled survivors said they should not have to prove they are victims of abuse and neglect – being in the system should be proof enough.

Deaf and disabled survivors and communities also told us that the focus of redress must not only be on individual perpetrators or organisations, but also on the broader

context and systems that allow abuse and neglect to occur. Preventing further abuse and neglect would require systemic change, which guaranteed the rights and freedoms of disabled people. The scale of change needed was greatly emphasised, reflected in survivor Matthew Whiting's words: "It is essential that we learn from history. The current abuse and neglect endured by people is a result of systemic issues."[263]

Protection of people from current and future abuse was a priority for many participants. We heard very clearly that stronger safeguards are needed across the care system to ensure that Deaf and disabled people are protected from abuse. Deaf and disabled survivors and communities told us this means putting safeguarding needs at the forefront of State policy and practice, including by building safeguards for disabled children and adults into legislation and strengthening regulation of the disability support workforce. We also heard of the need for a regulated reporting framework for disabled people, requiring staff and others to report any instances of abuse and neglect they saw.

Deaf and disabled survivors and communities also emphasised that redress needs to be coordinated and integrated across all of government to avoid creating "a new silo".[264] Deaf and disabled survivors and communities felt that there had been little acknowledgment, accountability or justice related to the abuse and neglect of Deaf and disabled people. We heard that abuse and neglect was hidden, and complaints downplayed, Deaf and disabled people not believed, and changes were not made to prevent further abuse when it was disclosed. Although disabled people have told their stories many times, "nothing has changed".[265] Critically, many people felt that even when it comes to addressing abuse, "disabled people are always 'tagged on' due to ableism and othering."[266]

We heard that there is a need to give visibility to the experiences of disabled people in Aotearoa New Zealand, including experiences of care. Dr Hilary Stace and Martin Sullivan told us that acknowledgement of these experiences, potentially through an archive or repository, was needed as a way to prevent Aotearoa New Zealand from 'repeating history'.[267] Survivors suggested a range of ways in which accountability could be provided, including national apologies and commemorations, including public apologies from organisations where Deaf and disabled people were abused. Sir Robert Martin has frequently called for a "citizen ceremony" for disabled people who were in institutions and had been denied the opportunity to be part of Aotearoa New Zealand society. Matthew Whiting called for an ongoing "Truth Organisation" that would provide "a forum for people to be heard and believed with respect to their experience. It would have the power to make organisations and the Government take responsibility".[268]

"I would like to see a citizen ceremony for all people who have been institutionalised in New Zealand. We were shut away from New Zealand society and culture - when people are shut away in an institution they don't feel like a citizen. This can even feel as bad as the abuse we experienced and witnessed. When I got out of the institutions, I felt like a non-citizen. I think a citizen ceremony is one thing the government could do for us."[269]

- Sir Robert Martin

WĀHANGA TUARUA

PART TWO

Ngā kōrero kua tae mai – ngā ngoikoretanga o ngā whakahoki a te Karauna me ngā wāhi whakapono
What we have heard – the failures of Crown and faith-based responses

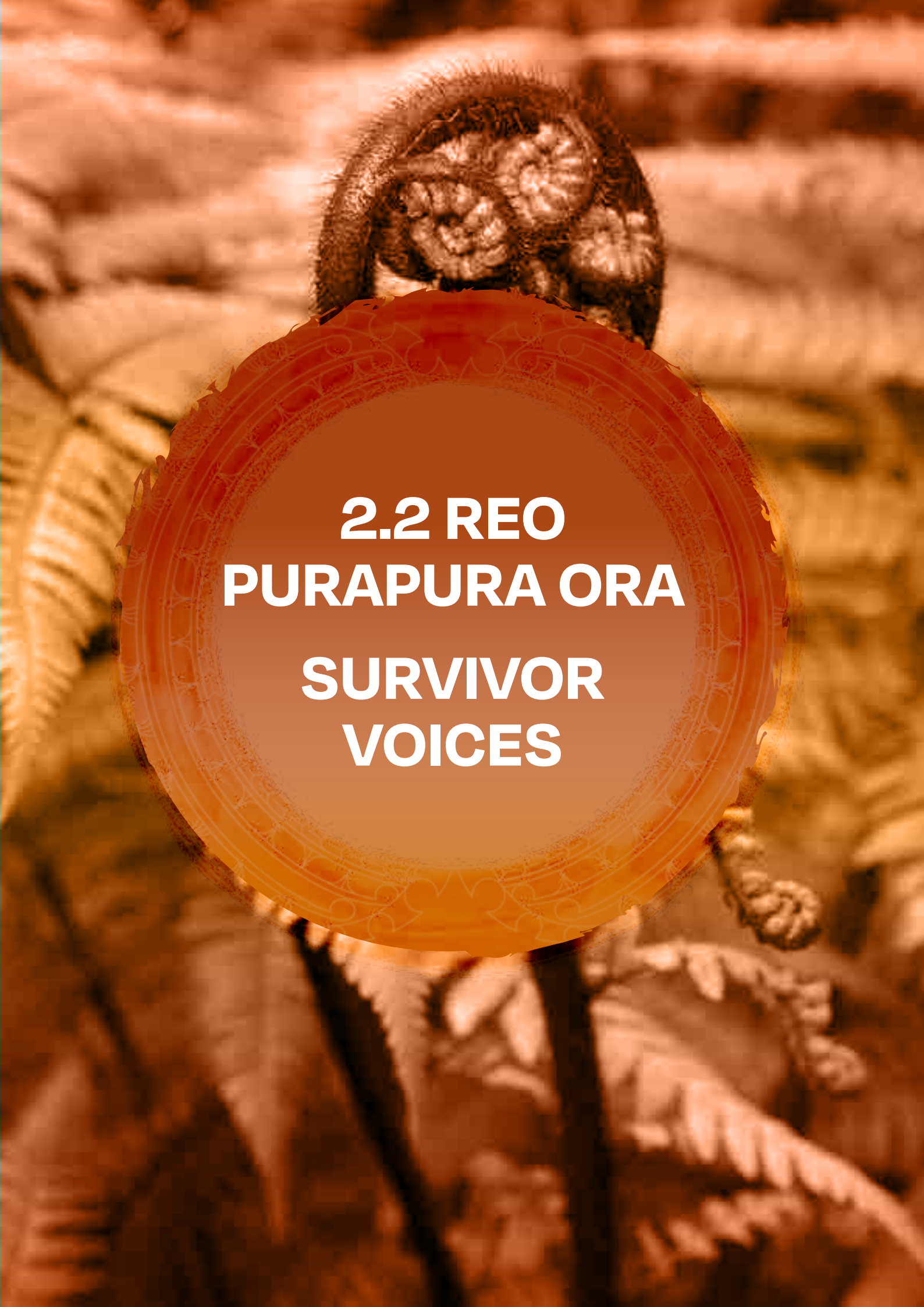
2.1 Whakatakinga - Introduction

Over at least two decades, thousands of survivors have tried to get some form of redress or restoration for the abuse and neglect they have suffered in State or faith-based care. Some have filed claims in court, others have approached institutions directly.

The Crown and faith-based institutions have responded to these claims in different ways. The Crown, for example, mounted a strong defence of early claims filed in courts, while faith-based institutions were mostly focused on settling those claims out of court, or in some cases referring them to their insurers. Both government and faith-based institutions have developed in-house claims processes. Some processes are more formal than others, but they all provide channels outside of the court system for survivors to make a claim and obtain some redress, usually in the form of an apology and financial payment.

This part looks at the responses of the Crown and faith-based institutions to reports of abuse, including the development of in-house claims processes, and most importantly, survivor experiences of those processes. It also looks at the other avenues available to survivors, and the particular issues survivors have faced attempting to access their records.

First and foremost, we hear from survivors.



2.2 REO PURAPURA ORA

SURVIVOR VOICES

Des Hurring:

Nā te manawa tītī me te tautoko a te whānau i hinga ai te ao waranga me te pāmamae
Life of addiction and trauma overcome by tenacity and the support of whānau

Des Hurring, of Ngāi Tahu, Tasmanian Aboriginal and British descent, was sexually abused by a family friend from age eight. He soon began to struggle at school. No one noticed the sudden changes in his educational performance and sleeping patterns, or wondered why he was no longer playing with other kids at school or in the neighbourhood.

Des spent five years under Department of Social Welfare supervision before being sent to Lookout Point Boys' Home in Dunedin for theft in March 1976, where he was subjected to emotional, physical and sexual abuse.

In 1977, Des was sent to Kohitere Boys' Training Centre in Levin, where he suffered more physical and sexual abuse from both staff and other boys. He described both places as creating "violent offenders, just like a production line, ready to move on through the prison system".

"I feel like the money I got from MSD [the Ministry of Social Development] is 'dirty money', mainly because MSD has never shown any real remorse or given me a proper apology or acknowledgement for the abuse and harm I suffered."

"After leaving Kohitere, I started drinking heavily and used drugs to help me forget what had happened to me in care. I remember I was pleading guilty to crimes I didn't do because I could not remember what I was doing. I had fallen into the trap of constantly taking drugs and excessively drinking alcohol to forget the painful memories.

"At this early stage, I really didn't care if I lived or died. Not surprisingly, I ended up in prison. At the age of 21, I was released from prison ... Eventually, I got my life back together. I obtained employment. I had purchased a house and was in a long-term relationship and then I had children."

In 2004, when Des was in his forties, he contacted law firm Cooper Legal, which was representing many other survivors, to try to get redress for the abuse he had suffered. In June 2006, after two years of preparation, he filed a claim in the High Court against the Ministry of Social Development.

In late 2007, the Crown Law Office contacted him on behalf of the ministry and suggested he withdraw his claim, which it said would face significant legal hurdles, most notably the Limitation Act 1950, which barred claims made more than six years after the events that were the subject of the claim. Des refused to withdraw his claim. In mid-2008, the High Court declined to hear his case, saying he had not adequately explained the delay in bringing his claim.

"In December 2008, Cooper Legal closed my file because my [legal aid] funding was withdrawn. At that stage, I thought I would never get any justice."

In May 2007, the ministry began an out-of-court process to resolve abuse in care claims, and in February 2012, Des met members of the ministry's claims resolution team. "I really struggled with the interview, and I was unable to disclose some of the sexual abuse I had suffered."

In order to get redress through the ministry's process, Des had to get hold of his Department of Social Welfare records. It took more than a year for the ministry to hand over copies of his records.

> *"Because of this, Cooper Legal took a claim for me and a large group of people whose records had been delayed, to the Human Rights Review Tribunal. As a result, I was eventually paid compensation of $9,000."*

In 2016 he accepted $12,000 offered through the ministry's fast-track claims process. He used the money to pay off some of his mortgage. "I feel like the money I got from MSD [the Ministry of Social Development] is 'dirty money', mainly because MSD has never shown any real remorse or given me a proper apology or acknowledgement for the abuse and harm I suffered."

> *"I did not take this case to get compensation. I was expecting MSD to admit the wrongdoing done against me. I was also expecting a real apology from the Government, and criminal charges being laid against the perpetrators."*

Des is now terminally ill.

> *"I want to live whatever life I have left with my wife, knowing at least that I have tried to right the wrongs out of my control, because of MSD and its cover-ups, denials and lies ... along with a broken system that remains to deny the truth of facts that to me are as clear as day.*
>
> *"I can only hope that, before the Royal Commission makes its final findings, MSD decides to make urgent change now – not just to mend, deny or cover-up, but to replace a broken system for the children who still need help and care. For me, this comes way too late. I am very lucky I found a way to survive through the horrible addictions and traumas in my life, largely due to the support of my wife. To me personally, that's worth more than any compensation money could ever make up for."*

Mr X:

Ka tipu ake i te ao taitōkai, tūkino ā-tinana anō hoki, ka whai mai ko tētahi mokemoketanga kino
An early life of sexual and physical abuse followed by tormenting loneliness

Mr X began running away to avoid violence at home. From around the age of 11 he was sent to Ōwairaka Boys' Home in Auckland, where he was placed several times. He was also placed at Hokio Beach School and Kohitere Boys' Training Centre, both in Levin, and eventually a borstal (youth detention centre) in Invercargill.

In Ōwairaka and Hokio Boys' Homes, he was repeatedly sexually abused by staff. He was also subjected to vicious physical abuse, including, at Ōwairaka, being forced to take part in "boxing rings" that ended only when one boy was no longer able to continue fighting. He was placed in solitary confinement for long periods, and he was deprived of an adequate education, despite being described as a high-achieving student.

Mr X also suffered racial discrimination because of his Samoan heritage, the impact of which included a loss of cultural identity, a loss of the Samoan language and a lack of any sense of belonging in early adulthood.

"I wandered all the way from the top down to the bottom of the South Island because I had no sense of belonging, I belonged nowhere. This is what the system has [pounded] into my head."

Mr X said he lived in a kind of void afterwards. "For years and years, I used to travel around New Zealand, I'd pick up my bags and go because I had no sense of belonging. They've taken my family away, they've taken my identity away, you know. And what are you left with? Nothing. That's why I wandered this country. I wandered all the way from the top down to the bottom of the South Island because I had no sense of belonging, I belonged nowhere. This is what the system has [pounded] into my head."

In 2020 he sought redress from the four State agencies responsible for his abuse while in care: the Ministry of Social Development, Ministry of Education, Ministry of Health and Department of Corrections. He had to lodge separate claims against each, which he said was an unnecessarily drawn-out and traumatic process. Mr X said the claims process needed to be overhauled and streamlined to make it focused on survivors and their welfare, not the administrative convenience of the agencies concerned. Each ministry or department required him to give a fresh account of the abuse, which he found extremely traumatic.

> *"They want[ed] times and dates of all the assaults, but it was over 40 years ago. The abuse carries on through this process. They say they understand it has been a long time when they ask, but then why are they asking? Of course, I don't have a diary with all the times and dates of when all the abuse happened. I was a kid.*
>
> *"There is so much that needs to be changed to make it an easier and level ground for a survivor to go through [a claim]."*

Mr X, now 61, did not qualify for legal aid and has had to pay for his lawyer to pursue his claim. He described this as another obstacle put in the way of redress by the Government. He said he was shocked to learn during the State redress hearing that

government agencies had spent 60 per cent of the funding set aside for historic claims on themselves, leaving only 40 per cent for survivors.

He believed the impact of abuse on survivors should be a factor in calculating compensation. He was astonished to discover during the Ministry of Social Development's out-of-court redress process that it was utterly indifferent to the consequences of the abuse on his life. Its only concern, he said, was what happened and when. "Come on people, it's all one. How it affected my goddamn life is because of that place. So why are you saying to me that it doesn't matter. Why? … Nobody gives a damn to give me an answer."

Mr X found the ACC sensitive claims process daunting. During the assessment, he didn't disclose the extent of his abuse because he didn't feel he could completely trust the ACC-appointed counsellor. He strongly believed claimants should be assessed by their own psychologist or a professional they trusted.

He said any redress should include an unreserved apology from the Prime Minister, as well as compensation. An apology made the State squarely responsible for the abuse, he said. It was also a prerequisite for survivors to truly start healing. "If you put an innocent man in prison, he comes out and the Government pays him millions … A kid in care – what do you get? $12,000 and they fight it."

> *"I want to make it quite plain and clear that in no way did I agree to be physically, emotionally and sexually abused. Make no mistake that this was sexual and physical and emotional abuse to its worst. It was torture. The way it has affected my life has taken all my chances away in life."*

Ms CU:

Ko te hononga ki te whānau me te hāhi te utu o te whakapāho tūkinotanga
Reporting abuse at the cost of relationship with family and church

Ms CU told us that in late 2017, her 15-year-old niece Lupe (not her real name) was groomed by a Catholic priest. What made the abuse even more damaging was that the Catholic Church held a deeply influential place in her culture and the life of her family and community, and it abused that position of trust and authority.

"The church is a place where Tongan people congregate and share culture and faith. So much of the cultural and social aspects of Tongan life are tied up in the church. The church is so intrinsic in the way it weaves through our lives."

Her niece was attending a family reunion, at which Sateki Raass was the officiating priest. After Lupe gave confession to Sateki, he began messaging her on Facebook and taking photos of her at the reunion on his mobile phone. He asked her to send him photos, promised to get her a mobile phone so he could continue contacting her, and persistently attempted to meet with her alone.

"Going up against the church felt like going up against Goliath. There have been bigger people with more resources who went up against the Catholic Church and they did not get anywhere. I knew what I was up against, but I had to do it."

"I think Sateki's behaviour was clearly grooming ... My niece was only 15 years old and Sateki was a grown man that held a significant, powerful role. Nothing anyone can say to me can make what he did better, or lessen it, or excuse it. It was, and is, wrong."

Several days after the reunion, Ms CU was shown the messages between Sateki and Lupe by another family member who had Lupe's Facebook account on her phone. Ms CU told Sateki to stop contacting her niece. She then spoke to her niece and her family, and told them she would report it to the diocese and Police.

Less than two weeks after seeing the messages, Ms CU made a complaint to the Diocese of Auckland. A week later, Ms CU met with Nicola Timms, Professional Standards Officer of the National Office for Professional Standards, who manages the Catholic Church's process for responding to complaints of sexual abuse. She told Ms CU to report the abuse to Police, as it was a criminal matter. She said that after the police investigation, the National Office for Professional Standards would investigate Sateki's behaviour as a priest.

After meeting with Ms Timms, Ms CU went directly to the police station to make a separate complaint.

She later learned the church had previously received a report of abuse against Sateki. She also heard from members of the community that there had been incidents between Sateki and young women in Tonga and that he had been moved from parish to parish as his behaviour was uncovered. She heard he had children with two young women, including one child in Auckland.

"Going up against the church felt like going up against Goliath. There have been bigger people with more resources who went up against the Catholic Church and they did not get anywhere. I knew what I was up against, but I had to do it."

Reporting the abuse to Police and the church threatened the vā or the cultural relationships between Ms CU and her family. It caused a fallout in her family and impacted their involvement in the Tongan community. Many people thought Ms CU should not have gone to Police but should have left it with the church. It brought fakamā, or shame, on her family, some of whom cut ties with her.

Ms CU explained that reporting the abuse threatened the reputation and unity of her family and the cultural dignity of her family members. Ms CU, her husband and their children ultimately lost the village and spiritual support the church provided. Ms CU told us that these things can be barriers to Pacific peoples reporting abuse. She said:

> *"In Tongan culture, you become almost cursed for going up against the church. If you go up against the church and do something against what everyone believes in, anything wrong that later happens in your life or any problems that arise are considered to be a result of you speaking up against the church. There is a very powerful sense of being observed and judged by the Tongan community."*

The Catholic Church paid for a Queen's Counsel to represent Sateki. He was convicted of indecent communication with a young person under 16 and sentenced to 100 hours of community service. At Sateki's sentencing, his service and leadership were discussed, and the judge spoke about his good character. "It felt like he was the victim," she said.

Ms CU was disappointed by the justice system. "I felt that the focus of what we were really in court for, my niece, was lost and we were now in court for Sateki. It felt like … we were there to protect Sateki while he made up a story to make what he did seem okay."

In early 2020, Ms CU contacted the church to express her disappointment at its lack of empathy towards her niece and her family during and after Sateki's sentencing. She met Bishop of Auckland Patrick Dunn and a female member of the church at the Pompallier Diocesan Centre. Bishop Dunn denied knowledge of the incidents between Sateki and other young women in Tonga, and warned her to be careful with news outlets. Bishop Dunn told us Ms CU was concerned about preserving confidentiality of her niece, and that any "warning" he gave was on the basis that media may not share her concern. Ms CU did not feel safe to ask the bishop the questions she wanted to put to him because of the location of the meeting and the one-sided way in which it was held.

Lupe has struggled to recover from the abuse and feelings of shame. Ms CU considered the church's response woeful. "I would have wanted the church to … admit that there was a wrong and take ownership of it … I feel that the church failed in its duty of care in every shape and form to help my niece, me and our families restore and recover." She would like to see the church acknowledge what it has done and publicly apologise to victims and their families.

Ms CU's experiences will be covered in more detail in a future report summarising our inquiry into abuse among Pacific peoples.

Neta Kerepeti:

I tētahi tamaiti purapura ora i tūkinotia, ki tētahi mātanga taurima - From abused runaway child to care professional

Neta Kerepeti grew up in Ngunguru, a small town near Whangārei. The town had a strong sense of community and a rich culture grounded in reo Māori and te ao Māori.

In the late 1960s Neta's parents moved the whānau from Ngunguru to Whangārei. Sadly, Neta's mother passed away in 1967, leaving Neta and her siblings in the care of Neta's father. It wasn't long before Neta's home life became fraught with abuse of various forms, perpetrated by Neta's father. Neta was subjected to the abuse between the ages of eight and 12. The abuse led her to act out in various ways. She became rebellious and admitted that she became a bully towards others. She also missed school and misbehaved when she did attend. Her truancy brought her to the attention of the Department of Social Welfare.

At 12, she became a ward of the State and was taken into care by the department. Neta was never told why she was taken away from her whānau. She was placed in a "family home" with several other children in State care. She described this family home and subsequent ones as horrible, unsafe places. In one, she was physically and sexually abused. She and other Māori children were treated more harshly because of their ethnicity.

"It is people who ... implement human-designed policies, processes and procedures. A system built by people for people, so obviously cannot be devoid of human thought and touch, and should not then be described as a function or failure of the system."

"Why was I removed from my home for truancy and then placed into care with evil people who were abusive? How could the Social Welfare Department not know that these people were abusive?"

At 13, Neta was taken to Bollard School for Girls in Auckland. On admission, she was subjected to medical examinations for venereal disease, a sexually transmitted infection and pregnancy by a male doctor, after which she was put in a locked cell for a week: "I was fully exposed to him, there was no female present ... I had no idea what a venereal disease was." No one bothered to visit her other than to give her food.

While at Bollard, Neta suffered still more sexual abuse, this time at the hands of staff. She became pregnant and miscarried. The abuse of power by staff fostered a deep distrust of authority that lasted well into her later years. Neta twice ran away from Bollard. She ended up living on the run from age 14 to 16. She did whatever she could to evade Police and the Department of Social Welfare. While homeless, she got mixed up with the wrong crowd and began taking drugs and drinking alcohol. She returned to Whangārei at 16, pregnant with her first child.

The State's failure to provide adequate care and support has deeply scarred her to this day. Yet despite her traumatic early years, Neta went on to complete a post-graduate diploma in social work and a Bachelor of Management. She has worked for Child, Youth and Family Services and other public service agencies and government ministries. Her experience in care and her time working in the care system put her in a unique position to make recommendations for change.

Neta said the care of children must be child and whānau-centric. At no point was she ever asked why she did what she did, or whether she needed support. Neta's whānau never had an advocate to help them as she was being taken into care. "The Social

Welfare Department practices were not whānau-centric. They were more focused on working through the process and putting me into the system. The person who mattered the most was not placed at the centre."

She said most of the State's funding and resources went to agents of the State to look after whānau Māori, whereas much more needed to go to whānau, hapū and Māori so they were equipped to support their own.

Neta was critical of the lack of culturally appropriate services available for Māori. Current services to address trauma are not always suitable or do not recognise mātauranga Māori and practitioners as a means of rehabilitation and healing for Māori. The State needed to broaden therapeutic methods for healing trauma beyond western styles of therapy, to include the use of mātauranga Māori and rongoā Māori. Neta said western standards could be restrictive and did not necessarily work for Māori. Government agencies should have trust in Māori to lead and express tino rangatiratanga for whānau through their own methods of healing.

Neta said embedding the principles of te Tiriti o Waitangi at the core of the care system was an essential reform, as was greater co-ordination between government agencies and communities, greater involvement by Māori in decision-making, and the recruitment of the right people with the right skills who were focused on the wellbeing of the individual and whānau. "It is people who ... implement human-designed policies, processes and procedures. A system built by people for people, so obviously cannot be devoid of human thought and touch, and should not then be described as a function or failure of the system."

Walton Ngatai-Mathieson:

Nā te motuhaketanga me te whakapono i tū kaha ai te tangata me ngā panga o ngā mahi tūkino - Independence and faith help man live with effects of abuse

Walton Ngatai-Mathieson, of Ngāti Porou descent, is 61 years old. Walton knows his whakapapa and is very proud of where he's from. He moved between living with several members of his whānau growing up and had a lot of whānau around to support him.

Walton was five when he was stung by bees, causing an infection in his eyes that eventually left him legally blind. He spent some time at Homai College for the blind in Auckland, which he enjoyed and started to learn braille. However, Walton developed epilepsy as a child and his grandparents, who were his caregivers, worried about his seizures and found it hard to look after him. They did not know how to get him through his seizures safely, so sent him to Gisborne Hospital.

Walton went on to spend 14 years of his life in State psychiatric institutions, including the child and adolescent unit of Lake Alice Hospital near Whānganui, Hastings Psychiatric Hospital, the psychiatric unit of Cook Hospital in Gisborne, Tokanui Psychiatric Hospital near Te Awamutu and Porirua Psychiatric Hospital near Wellington.

"I am trying to reconnect with my whānau and learn te reo Māori, but my experiences in care continue to affect those relationships and my ability to learn. I do not like to talk about it with them or have them bring it up."

Walton suffered neglect and sexual, physical and psychological abuse in care. He also received unmodified electro-convulsive therapy, or ECT, paraldehyde (a powerful sedative) and other improper treatments and was made to spend significant amounts of time in seclusion. He described Porirua Psychiatric Hospital as the worst hospital he spent time in, and Tokanui Psychiatric Hospital as the best. Despite knowing Lake Alice Hospital has closed, he remains scared he will be sent back there.

Walton never knew he could make a complaint to Police about what happened to him at Lake Alice. When he was sexually abused there, he was only 12 and did not understand what rape or sexual abuse meant. When he was raped at Porirua, he was older and understood. Walton told staff at Porirua he wanted to charge the person who raped him. They responded by locking him up and giving him paraldehyde for complaining.

The Government awarded Walton compensation for the torture carried out against him at Lake Alice. He found the process of seeking compensation okay because he had a lawyer to help him, but he considered the amount of compensation he received inadequate. He received no compensation for the sexual abuse he suffered there because his lawyer never asked him about sexual abuse. His lawyer knew nothing about it and so did not include it. No one told him he could seek ACC compensation or that he could make a civil claim for abuse he suffered at institutions other than Lake Alice, such as the sexual abuse at Porirua Psychiatric Hospital. His lawyer did not ask him about his experiences in other institutions.

The abuse Walton suffered and the effects of being kept in psychiatric institutions have had profound impacts on his life. Since leaving psychiatric care, Walton has worked hard to rebuild connections to his culture and his spiritual beliefs: "I am trying

to reconnect with my whānau and learn te reo Māori, but my experiences in care continue to affect those relationships and my ability to learn. I do not like to talk about it with them or have them bring it up."

Walton is proud of his independence. His faith and strength of character help him with the challenges he has experienced and continues to experience: "Things that have helped me since being in the community are the tools that allow me to be more independent, such as my scooter. I am very proud to be able to drive my scooter around town to get myself around. Becoming a Christian and joining a church has also helped me, I like socialising with my friends at church."

Alison:

He tūroro haere ake nei i rongo i ngā tūkino me ngā kore manaaki katoa
Long-term patient who suffered every conceivable abuse and neglect

Alison was born in 1942 in Auckland. At three years old, she became extremely ill with a rare form of chickenpox that caused inflammation to her brain. The inflammation caused high temperatures, loss of consciousness and seizures. She nearly died. Alison was told this caused her brain damage.

In 1945, Alison was three years old and was sent to Lillian Smith's Health Farm in Takapuna. Soon after that she was sent to various institutions including Kingseat Hospital in Auckland, Auckland Mental Hospital (Carrington), various boarding homes and rest homes, and later assisted living facilities. Alison has never had a mental illness.

Alison came from a very wealthy family, but she says that did not do them any good. She says her father had a shocking and uncontrollable temper. Alison was physically abused by both her father and her mother when she was little. She used to run to an older lady next door, where she felt safe. Her father told her she was going to a girls' boarding school when he dropped her off at Kingseat at eight years old. He later told her that it was her fault she was in a psychiatric hospital because of "rotten behaviour". Her mother told her that she was the hospital's responsibility, not her

"The abuse was appalling, inhumane, shocking - to me it was criminal."

parents' responsibility. Alison was always in wards with adult patients at Kingseat, not other children.

Once she was institutionalised as a child, she was physically and mentally abused, over-medicated, injected with sedatives as punishment and received electro-convulsive therapy (ECT) several times. She was also put in seclusion for extended periods of time, placed in straight jackets, denied medical care and had her pets abused or killed in front of her. When she was 11 years old, Alison was sexually assaulted at knifepoint by an adult male patient at Kingseat.

When she was in seclusion she often couldn't go to the bathroom and was forced to go on the floor. On one occasion after she had to urinate on the floor, the staff punished her by physically attacking her. Sometimes a whole group of people were locked in together, and everyone was forced to go on the floor until the door was opened by staff in the morning.

All this abuse occurred consistently throughout her care. Alison spent about 50 years at Carrington. She continued to be physically and sexually abused. Her pet birds Bonnie and Clyde were given away to a staff member at Carrington without her permission. She was placed with violent men with dementia, and had her property thrown away, smashed up or stolen.

Alison and her parents often voiced complaints to hospital management or to outside institutions, such as Police, the Chief Ombudsman and the Ministry of Health, but with limited results. Staff actively encouraged other patients to bully Alison and punished her for complaining. Often, she was left with life-threatening injuries and nothing was done. Alison became well known at Kingseat and Carrington for standing up for herself and for other patients.

At Carrington, Alison met a patient-advocate called Rod Davis, who has been trying to help her since 1988. Charge nurses were dismissive and insulting. They would not talk to him about their treatment of Alison. The doctors would, however, speak to Mr Davis. Mr Davis spoke to them about Alison's dosages and prescriptions exceeding the manufacturers' recommendations. He convinced them to reduce Alison's medication, but they would not take her off it completely.

Mr Davis also told the doctors about the abuse carried out by nursing staff, but his impression was that they did not think it was their responsibility to do anything.

Alison wrote to everyone she could think of – including the Queen. The staff at Carrington would read all her mail. A doctor complained about the number of replies he was having to write in response to her complaints, but still nothing came of them.

Before Mr Davis left Carrington, he referred Alison's case to the hospital district inspector who managed to get Alison off medication and compulsory treatment. Alison says that the District Inspector Paul Treadwell was a wonderful and kind man.

In 2005 Alison engaged lawyer Sonja Cooper of Cooper Legal, through legal aid, to file a civil claim for her against the Crown. The case took seven years to resolve, but she was then awarded $18,000 "for the abuse and neglect and being wrongfully held in psychiatric hospitals". Alison was a victim of shocking, appalling and inhumane treatment as well as neglect in psychiatric institutions. She says the abuse was criminal.

Maggie Wilkinson:

He "kāhakitanga" tā te hāhi tango i te pēpi
Church's taking of newborn "abduction"

Maggie became pregnant in 1964 and about three months into her pregnancy went to St Mary's Home for Unwed Mothers in Auckland to have her baby. The home was run by the St Mary's Homes Trust Board, a social service affiliated with the Anglican Church. After the delivery, the matron removed the baby while Maggie was sleeping, and she saw her briefly only one more time – an act Maggie calls abduction.

Maggie said she suffered dehumanising emotional abuse while at St Mary's. She said all the heavily pregnant women there endured a relentlessly heavy work schedule and weren't given enough to eat so they would have small babies and minimise the risk of delivery problems. "The regimented discipline was excessive, cruel and incapacitating."

As a punishment for getting upset at a fellow resident, staff induced the delivery without medication. The delivery was difficult, and Maggie was left with physical complications. "I was torn to pieces inside." No postnatal treatment or support was offered. Maggie was given medication without her consent to stop lactation. A nurse allowed the baby to remain briefly with Maggie. When Maggie fell asleep, the baby was taken away. Maggie was called to say goodbye before the baby was given away but was not allowed to touch her. "No-one bothered to look back at the grief of the sacrificing mother."

"When I walked in, she asked me: 'Margaret, were you brought up in the faith?' I didn't feel that was relevant or appropriate. The mediation experience was awful. As a consequence, my depression intensified."

Eight days after the birth, Maggie was taken to a law office and made to sign the adoption papers without legal advice and without being told her rights. "I was discharged from St Mary's without my baby two weeks after the birth. I was discharged bleeding, both physically and mentally." For years afterwards, she grappled with grief and depression.

In about 1992 Maggie met the manager of the trust that ran St Mary's. He wrote to the Bishop of Auckland, Bruce Gilberd, to say the church care of her was "damning and damaging" and suggested that he would like the bishop to speak to her. Bishop Gilberd called Maggie and apologised over the phone. She requested the Anglican Church publish a written acknowledgement and apology in its newsletter and in the New Zealand Herald. This was done. "I believe that apology was only spoken and written to merely keep an angry woman quiet."

In 2014, Maggie requested her medical file from the trust, but it told her a fire had destroyed the records. When she requested her records from the church's archives, she was told the papers were destroyed when a hot water tank burst.

Maggie engaged law firm Cooper Legal to seek financial compensation from the church. Mediation was arranged. Maggie said she found the first question of the trust's representative offensive. "When I walked in, she asked me: 'Margaret, were you brought up in the faith?' I didn't feel that was relevant or appropriate. The mediation experience was awful. As a consequence, my depression intensified."

Lawyers for the trust and the church's Auckland diocese sent her a letter in March 2016, which, to her mind, deflected responsibility for the way she was treated by

saying the practices Maggie described would not be permitted today. "I take great exception to the inference that it was perhaps the fact that I was a rather pathetic child and that was the reason I did not cope with the treatment at St Mary's."

Maggie was offered six counselling sessions. The mediation process cost Maggie $10,000 in legal fees, which the church refused to help pay for.

In 2015, Maggie asked Police to investigate the matter. They said they could not bring charges for abduction or kidnapping, although they might have been able to if the matron, Rhoda Gallagher, had still been alive.

During the inquiry's faith-based redress hearing, the church contacted Cooper Legal to say it had reopened her case. It subsequently offered Maggie monetary compensation, funding for legal expenses and a contribution towards legal aid, which she accepted.

> *"The [money] offered will not, and never will, compensate for the loss of my first child, but I believe my tenacity has been worth it."*

Maggie said the church should fund an independent counselling service for the mothers and the children taken by institutions. It should also issue a public apology to affected mothers and children, and dedicate a stained-glass window at the Holy Trinity Cathedral in Auckland to the mothers and children affected by adoption. She also wants changes to the country's adoption laws.

Ms M:

Tā te umanga hāhi me te Karauna ngoikore ki te whakarite tikanga whakahaere pai -
Church agency and the State's failure to provide adequate supervision

Ms M was born in 1962 in Christchurch. She and her sister Janie were taken into care at seven when her mother and step-father died. The Department of Social Welfare and Anglican Social Services,270 an agency affiliated with the Anglican Church, were both involved in their care, although neither wanted to accept responsibility for them.

Anglican Social Services placed the sisters with foster parents, but no one came to check on them in the five years they lived there. Their foster father was abusive. He was later charged with unlawful sexual conduct towards both sisters but was acquitted after a trial.

The sisters were then separated. The family Janie was placed with did not want her to have contact with her sister. They lost touch until their 30s. Janie died at 51. "Janie was my everything ... Janie would be [giving evidence] if the effects of years of trauma hadn't taken her life at the age of 51. She would have stood alongside me to tell her story."

"The settlement money became tainted. I felt like I was being raped over and over again by the system that claimed good faith to redress an historical abuse. Someone said something to me about the money being for my future. I realised then that I didn't believe in a future."

Ms M said that after the trial each of her carers was told about what had happened, and she considered this gave them licence to abuse her. "I do not believe that a complainant in a trial should be labelled as a liar just because the accused is acquitted. I believe by 'warning' all my foster parents, those men were given a green light to abuse me because they knew no one would believe me."

Ms M was also sexually abused by another foster parent, who later adopted her. She reported him to Police when she was 28. Police did not lay charges, despite her adoptive father's admission that he had had sexual intercourse with her. Police told her they did not think they could win the case because she was around 16 or 17 when the offending began and the trial with her first foster father could be used to discredit her.

In the late 1980s, both sisters applied for ACC compensation. Ms M found ACC difficult to deal with. She was declined an independence allowance because of a miscalculation of her entitlement.

In 2010, Ms M contacted the Christchurch diocese of the Anglican Church to seek redress. She was told someone would get back to her, but no one ever did.

In 2012, she contacted the Confidential Listening and Assistance Service, which was set up to hear from survivors of abuse in care. The Ministry of Social Development then got in touch. It acknowledged the delay in processing her claim and offered to put it through its fast-track process. She felt pressured to take up this option and was concerned she would receive no compensation if she chose not to. She accepted an offer in 2015, but was told she needed to spend the settlement money within a year or it could affect her benefit. She was also required to provide receipts to prove her spending was not reckless.

She felt these conditions were intrusive and unjustified.

> *"If I had other money, say from an inheritance or I was able to work full-time, then no one could interfere with how I spent the compensation money. It's like they want to keep you poor."*

Ms M and her advocate tried to work with Work and Income New Zealand to find a solution, but were unable to do so. She was left feeling frustrated at the process. "The settlement money became tainted. I felt like I was being raped over and over again by the system that claimed good faith to redress an historical abuse. Someone said something to me about the money being for my future. I realised then that I didn't believe in a future."

After giving evidence at the faith-based redress hearing, the church approached her to discuss settlement options. Those discussions are continuing.

Marc Sinclair:

Purapura ora o ngā mahi tūkino ā-tinana, taitōkai hoki a ngā rangatira o te kura me te hāhi
Survivor of physical and sexual abuse by school and church leaders

Marc Sinclair, 54, grew up in Dunedin where he suffered physical, sexual and psychological abuse at the hands of two Christian Brothers teachers, Brother Victor Sullivan and Brother Desmond Fay, a diocesan priest, Father Kevin Kean, and a lay teacher, Ian Thompson.

Marc grew up in a loving family and was a highly intelligent and well-liked child. However, a series of tragedies happened to the family early in Marc's life. At 9, he was told his father was dying of cancer and at about the same time, his older brother was diagnosed with cancer. Both died within a short period of one another, as did his grandfather, with whom he was very close.

At the time of these tragedies, Marc was attending St Edmund's School in South Dunedin, an intermediate school run by the Christian Brothers where punishments were brutal. On one occasion, Marc was punched in the stomach by Brother Fay, an assault that left him winded and blacking out from pain. Marc was often sent to the principal's office for minor school infringements, and it was here the principal, Brother Sullivan, physically and sexually abused Marc on an almost weekly basis. Brother Sullivan would put Marc over his knee and smack his bare bottom until Marc was

"Father Kean made other attempts to force Marc into his car, but he eventually told his mother, who confronted Father Kean and told him in no uncertain terms she would 'kill him' if he ever tried to lay a hand on Marc again."

crying so heavily, he could not breathe and at times Brother Sullivan would insert his finger and other items into Marc's anus. But it was when Brother Fay was sometimes present that Marc would be forced to put his mouth around Brother Fay's penis while he was being smacked.

When Marc was 12 and an altar boy at St Patricks Church, Father Kean, a parish priest, drove Marc unwillingly to an unlit road and grabbed his genitals, but Marc managed to escape before more could happen. Father Kean made other attempts to force Marc into his car, but he eventually told his mother, who confronted Father Kean and told him in no uncertain terms she would "kill him" if he ever tried to lay a hand on Marc again. Father Kean had no further contact with Marc. Shortly afterwards, Marc stopped being an altar boy and stopped going to church.

Marc moved on from St Edmunds to St Paul's High School (also run by the Christian Brother Order). Here Marc met Ian Thompson, a notoriously violent lay-teacher. On one occasion he beat Marc with a long cane until he was semi-conscious. This was a common occurrence with other students at the school when punished by Ian Thompson in particular. He also, during photography lessons, fondled Marc's genitals in the dark room. Later, Ian Thompson caught Marc smoking and called him to his residence for punishment. Marc was met by older students, who held him down while Mr Thompson caned him. After, Mr Thompson gave him a cup of tea and told him to take some "aspirin" he offered. The next thing Marc remembered was waking up next to another student. His shorts were unbuttoned and his underpants did not fit properly. Marc climbed out of a window to escape the locked house but soon felt nauseous and had violent stomach cramps. He made his way to a public toilet with

cramps, vomiting and diarrhoea. His underpants were bloody, his anus was extremely sore, and there was blood in the toilet. Marc's mother realised later there was something wrong because she arranged for him to leave school at just 14.

This trauma has left Marc with complex post-traumatic stress disorder (or PTSD) with associated persistent depression. He has suffered from severe anxiety, somatic disorders and alcoholism, and had previously made attempts to take his own life. He could not stay in New Zealand and left for Australia at 19 where he now lives. The abuse affected every aspect of his life and greatly impeded his ability to form meaningful, loving, long-term relationships. He has lived a life filled with fear, shame and guilt.

Marc could not tell anyone about the abuse while his mother was alive. After her death in 2013, he initially reported only part of Brother Sullivan's abuse. The Catholic Church directed him to Christian Brothers Oceania. Marc was offered 10 counselling sessions, but he realised such a limited number of sessions, without being able to afford ongoing help himself, would only leave him in a more vulnerable state. After a difficult negotiation process, a settlement of $65,000 was agreed, plus up to $5,000 to seek independent legal advice. He was also sent a letter of apology. A year later, in desperate need of more support and rehabilitation treatment, he again approached the Christian Brothers for assistance with going to an addiction treatment centre, but this request was turned down.

Marc finds the church's claims process highly legalistic and impersonal. The National Office of Professional Standards, the church body that manages complaints of sexual abuse against clergy and religious, does not have a mandate to investigate complaints against lay people (non-clergy and non-religious). And, more recently when Marc has sought to fully disclose the full breadth of his abuse, he had to fight to keep his whole story – including abuse by a lay teacher at a Christian Brothers' school – together as much as possible. Through negotiation the National Office of Professional Standards agreed to provide Marc's statement to the Christian Brothers so Marc would not need to give a second statement regarding this part of his experience.

Marc has extended his claim to include Brother Fay and Mr Thompson and is currently negotiating a top-up payment.

After discussions with the Bishop of Dunedin, Michael Dooley, about the abuse by Father Kean, the diocese (after an initial offer of $25,000) has agreed to a payment of $50,000. At Marc's request, the diocese has also agreed to establish a scholarship to fund the education of an under-privileged student at Kavanagh College, Dunedin's only Catholic secondary school, which was founded on the site of St Paul's High School.

Ms K:

Tekau mā waru tau, tokorua ngā tangata hara kua whiua ki te ture me tētahi kōwhiringa "muhani"
Eighteen years, two convicted perpetrators and one "insulting" offer

Ms K, a child of a devoutly Catholic family, was abused in 1977 by two Marist brothers, Brothers Michael Beaumont and Kevin Healy (known as Brother Gordon), in her home in Masterton in 1977. Both were teachers at her older brother's school, and both were active members in the local church and community.

Ms K was nine when Brother Beaumont abused her. He was invited to the family home for dinner. Everyone gathered for prayers afterwards. Brother Beaumont beckoned Ms K, who was in her pyjamas, to sit next to him during the prayers. He put his arms around her shoulders and pulled her close. Everyone closed their eyes reverently as prayers began. He then slid his hands down her pyjama pants and inserted his finger into her vagina where he kept it for the half hour it took everyone to recite the rosary. Ms K was petrified throughout this ordeal, and in her mind was begging her parents to open their eyes. But neither did. Afterwards she ran to her room, knowing something terribly wrong had happened. However, as she put it, Brother Beaumont had made her feel bad, so she had to be a bad person. She internalised the shame.

"Following Michael Beaumont's conviction, Ms K was offered an apology. Then in February 2020, she was offered an ex-gratia payment of $5,000. The letter said the religious institute did not have extensive wealth and was under financial constraints. Ms K considered the offer 'a total insult' and rejected it."

On another occasion, Brother Gordon came into her bedroom and insisted on a proper kiss before he would go. She relented and gave him a kiss on the cheek. He insisted on a "proper" kiss and gave her a full kiss on the mouth. Ms K said he then pushed his tongue into her mouth and she felt "very frightened and disturbed. It was revolting and I felt disgusted by it ... It was not an instant kiss. It lasted for several seconds, and I remember lying stiff and just wondering what was happening. [He] left the room and I lay there silent, not really understanding what had just happened".

The family later moved to Wellington and then to Perth, Western Australia, when she was 18. She still lives there.

Ms K has been diagnosed with post-traumatic stress disorder, or PTSD, along with anxiety and depression. She said the abuse had "deeply affected my ability to form safe and normal relationships with men ... and affected my ability to love and hold my children".

The Marist Brothers in New Zealand appear to have been aware since 1997, and possibly earlier, of allegations of abuse against Brother Beaumont. The religious institute had also received allegations of abuse against Brother Gordon.

In 2003, Ms K contacted an Australian bishop about her childhood abuse. He passed her report of abuse to the Marist Brothers in New Zealand, and an investigation began. Meanwhile, the Australian arm of the religious institute paid for Ms K to receive counselling. Unbeknownst to Ms K, the counsellor reported back to the institute on the counselling sessions.

Two years passed before the Marist Brothers in New Zealand completed an investigation and concluded there was nothing to corroborate Ms K's allegations and "no mechanism to determine the truth of the matter". Both men had by then left the Marist Brothers and denied any wrongdoing, and so the religious institute said it could do nothing more.

Ms K engaged a lawyer to bring a civil claim. The Marist Brothers' lawyer highlighted various legal obstacles in the way of her claim. Her lawyer agreed and suggested she complain to Police, which she did. In 2016, Police charged both men. Michael Beaumont (known as Brother Beaumont before he withdrew from the Marist Brothers in 2001) was found guilty of indecent assault in 2019, and Kevin Healy (known as Brother Gordon before he withdrew from the institute in 2000) in 2020.

Meanwhile, Ms K's lawyer sent the Marist Brothers a claim for compensation in 2018. A lawyer for the religious institute repeated the same list of technical obstacles that its earlier lawyer had mentioned: the limitation defence, absence of vicarious liability and accident compensation legislation.

Following Michael Beaumont's conviction, Ms K was offered an apology. Then in February 2020, she was offered an ex-gratia payment of $5,000. The letter said the religious institute did not have extensive wealth and was under financial constraints. Ms K considered the offer "a total insult" and rejected it.

In June 2020, following media coverage of her story, the Catholic Church's body for overseeing reports of sexual abuse, the National Office for Professional Standards, announced that it would review the Marist Brothers' investigation into her reports of sexual abuse. In November of that year, it said it had found significant failings in the investigation and concluded it was unreliable. It offered to launch a fresh investigation. This was surprising given that by this time both men had been convicted before the courts over the sexual abuse that she had disclosed.

Very recently, in September 2021, the Complaints Assessment Committee has agreed a process for the National Office of Professional Standards to adopt where convictions have been entered or when a respondent is found not guilty. These changes are yet to be formally incorporated into the church's process called 'Te Houhanga Rongo – A Path to Healing'.

Neither the Marist Brothers nor the National Office for Professional Standards has looked at whether the deficiencies in the investigation into Ms K's reports of abuse had been repeated in other investigations into abuse complaints against Marist Brothers.

The Marist Brothers has subsequently paid for further counselling, but 18 years after reporting her abuse, Ms K has yet to receive a satisfactory offer of compensation.

2.3: Te whakahoki ki te puretumu a te Karauna
The Crown redress response

Tūāpapa ki te whāinga a te Karauna
Background to the Crown's approach

Waonga o ngā kerēme tōmua - Defence of early claims

From the mid-1990s, a growing number of individuals began to make claims about neglect and abuse they experienced while in State care. The vast majority related to abuse at Lake Alice Hospital's Child and Adolescent Unit during the 1970s. The remaining handful related to foster care or adoption placements or other settings.

Leoni McInroe was the first person to take court action over Lake Alice abuse. She filed a claim in court in 1994 seeking compensation for the abuse she suffered while she was a young patient at Lake Alice (a case study of her experience is included in Volume Two of this report). From 1996, law firm Grant Cameron Associates began representing growing ranks of other former patients of the child and adolescent unit. The firm did media interviews and more former patients came forward.

Claimants all told a similar story. They had been at the unit sometime between 1972 and 1978, they had been no older than 16 while there, and they had suffered or witnessed horrific abuse, including being subjected to shocks from electroconvulsive therapy (ECT) equipment without sedation and painful injections of a sedative drug called paraldehyde as punishment, either by or under the supervision of Dr Selwyn Leeks. Records from the unit showed clear evidence that staff had administered electric shocks, ECT and paraldehyde, without consent, to children as a form of behavioural control rather than treatment. Records from two independent inquiries in the 1970s also contained strong evidence of these practices. As Una Jagose, the Solicitor-General said in her evidence to us, the proof that Dr Leeks was in fact using these treatment methods to punish and modify behaviour "was right there in the file".[271] (We will discuss this and the experience of survivors in more detail in our report on Lake Alice).

Lawyers of former Lake Alice residents wanted out-of-court settlement of their clients' claims. In 1997, Grant Cameron Associates proposed, on behalf of its clients, that the Government establish an inquiry into the events at Lake Alice, to be followed by an out-of-court settlement agreement that would include payment of compensation and the issuing of an apology.

The Crown seemed to show willingness to resolve the claims in this way, but in reality, it was focused on defending itself against liability for what had happened

to claimants. For example, the Crown applied to strike out Leoni's claim without a hearing, not on the basis that it disputed the abuse had happened, but on the basis that enough time had passed since the abuse that it was entitled to rely on a defence under the Limitation Act 1950. The Crown also argued that accident compensation legislation barred such a claim. Crown Law made similar arguments to fend off claims of abuse in foster care. No consideration was given to te Tiriti obligations.

The Crown engaged in discussions with Grant Cameron Associates, but in March 1999, after more than two and a half years of discussions, it wrote to Grant Cameron Associates saying it would not enter into the settlement process the firm had proposed, but rather would defend its clients' claims in court. It said the courts needed to test the legal issues at stake in these claims before there could be any question of out-of-court compensation.

In short, the Crown refused to acknowledge the harm it had done to survivors, despite the supporting evidence on record. It resisted their claims using all available legal defences, resulting in years of delay before these survivors could make any progress on their claims.

Huripoki – he whakataunga me tētahi whakapāha ki ngā kaikerēme Lake Alice
A change of heart – settlement and apology for Lake Alice claimants

By the early 2000s, Grant Cameron Associates represented more than 100 former residents of Lake Alice. They continued to lobby politicians for some kind of resolution, and after a change of Government in 1999, their lobbying paid off. In May 2000, the new Prime Minister and Minister of Health recommended to Cabinet to direct officials to negotiate with Grant Cameron to work towards establishing an alternative dispute resolution process for the Lake Alice claimant group.

The advice before Cabinet noted that the Crown had at its disposal a range of potential "technical defences", including many of those described in part 2.6 below, such as the Limitation Act, immunities under the Mental Health Acts for acts done in pursuance of that legislation, the bar on claims for personal injury that occurred after 1974 under accident compensation legislation, and defences against vicarious liability. However, the advice also recognised that the State had a moral obligation to help those harmed while in its care. It considered the vulnerability of the individuals involved, the distress that litigation might cause, and the potential for an alternative process to litigation to meet claimants' needs. For these reasons, the Crown chose to offer a settlement to this group of claimants.

The path to settlement was still not straightforward. It took more than a year of negotiations to agree on a specific out-of-court settlement process. In July 2001, five

years after the first proposal from Grant Cameron Associates, the Government set aside $6.5 million to settle the claims of this group of former Lake Alice residents. Anyone at the Lake Alice unit at the relevant time who had declared their abuse was eligible for redress.[272] A retired judge, Justice Rodney Gallen, heard from each claimant and determined a settlement amount, after which each claimant received an apology from the then Prime Minister and Minister of Health.

The Government later extended this process to others who had been at the unit at the relevant time and who had made claims after the initial group. It put aside a further $5.7 million for settling this second round of claims and also appointed a lawyer to help claimants.

Te whānuitanga o ngā mahi tūkino i te wā o te noho taurima
A bigger picture of abuse in care

The Lake Alice group settlement drew publicity, as did two court decisions soon afterwards that found the Government liable for abuse suffered in foster care. Following this, more and more people came forward seeking compensation from the State for abuse in psychiatric hospitals, as well as in child welfare and educational settings.

The first claims were mostly from people who had suffered abuse in psychiatric hospitals, including a large number at Porirua Psychiatric Hospital, as well as others who had been at Lake Alice but not in the child and adolescent unit and so were ineligible for the settlement process. Some claimants approached the Government directly, others through lawyers. By July 2003, two law firms, Cooper Legal[273] and Johnston Lawrence Ltd, were representing about 90 such claimants. By the end of 2007, this number had doubled.

As with the Lake Alice group, lawyers for these claimants asked the government agencies involved to agree to an out-of-court resolution of the claims. They pointed to the similarities in the abuse suffered by their clients and those in the Lake Alice group and proposed that the Government hold an inquiry and establish a group settlement process like they had for the Lake Alice group. When these approaches came to nothing for the survivors, they began filing claims in court, but continued to advocate for a settlement process throughout the next decade.

Individuals reporting abuse in other forms of State care also came forward. Before long, the majority of claimants were people abused in social welfare settings, such as boys' and girls' homes, other residential institutions and schools, and foster care. Many came to be represented by Sonja Cooper from Cooper Legal. By January 2007, the firm represented about 500 people claiming abuse in social welfare settings, a large majority of them Māori. More continued to come forward. These claimants, too, sought an out-of-court settlement.

He kerēme whānui, he uaua ki te whakaū, he manganga ā-ture hoki
Claims broad, difficult to prove and legally complex

The range of claims made against the State was broad. Many former psychiatric hospital patients reported experiences of similar abuse to that suffered by former Lake Alice residents – use of shocks from ECT equipment and paraldehyde injections as punishment, and physical and sexual assaults. But they also reported other types of abuse and neglect, including claims that they had not received adequate care, were exposed to criminal conduct, witnessed violence, were verbally abused and were improperly placed in secure confinement.

The claims made by former State wards and children in social welfare care were similarly broad. They related to many different types of abuse and neglect in many different institutions and different time periods. Often individual claimants made claims about their treatment in numerous settings. In January 2006, Cooper Legal compiled a document for the Ministry of Social Development summarising some of the allegations made by several hundred of its clients. It listed 16 residential institutions or programmes that were the subject of recurring allegations of abuse and set out the types of abuse claimed to have happened at each one, naming more than 200 alleged perpetrators of that abuse.

The Crown conducted some preliminary investigations, uncovered some evidence of abuse but came to the view that there was nothing on the scale reported by claimants. For example, Crown Law reviewed records and interviewed former staff at Porirua Psychiatric Hospital and said there was evidence the hospital commonly used ECT and sedatives during the relevant time. However, it said the hospital had policies and processes for its use, and "there [was] no independent evidence that these treatments were regularly or systematically used to punish patients rather than to treat them".[274] It acknowledged that some staff recalled instances of physical abuse, physical restraint and "strong-arm" tactics, as well as nurses who "did not treat patients with the dignity they deserved".[275] However, it found no evidence of sexual abuse.

The Ministry of Social Development also investigated some of the institutions named by Cooper Legal. A report in August 2006 said some former staff described work practices that "reflected a tough regime" and acknowledged that certain staff members behaved in an "unreasonably and unacceptabl[y] violent way", but concluded that the evidence at this stage "[fell] short of a widespread culture of abuse".[276] The report found that a dozen or so instances of sexual and physical abuse were recorded on file, but this didn't come close to the hundreds of incidents reported by claimants.

In short, the Crown's view was that the evidence to support this group of claimants was insubstantial compared with that available to the Lake Alice survivors.

The claims were also legally complex, and survivors faced many legal hurdles common to these types of claims (as described in part 2.6). The relationships and duties between the State, the survivors and the alleged abusers were often complex, and the causal link between the abuse suffered and the impact on the survivor's later life was difficult to prove. The claims were all historic, leaving them vulnerable to a limitation defence unless survivors could show they had a disability preventing them from claiming earlier, or they could not have known about the impact any earlier. The claims also involved personal injury, yet accident compensation legislation barred most claims involving injuries suffered after 1974. The Crown also had immunity from lawsuits over actions that staff in psychiatric hospitals had taken pursuant to the Mental Health Act 1911 and the Mental Health Act 1969, and so arguably for some of the actions now claimed as abuse.

It was extremely taxing for survivors, financially and emotionally, to attempt to overcome these hurdles.

Waiaro o te Karauna - The mindset of the Crown

Four factors coloured the Crown's thinking towards these cases over the next decade:

Ka huakina ngā tatau - Opening the floodgates

The first was a concern that settling claims too readily might encourage many more survivors to come forward, regardless of whether they had genuine, exaggerated or "opportunistic" claims. It did not consider it should pay compensation for acts for which it had legitimate legal defences. Nor did it want to take an approach that would require it to settle a large number of claims, especially if, in the Crown's opinion, they would not stand up to scrutiny. Its view was that many of the claims had no legal or factual merit, or were excessively broad, or sought compensation for things for which the Crown was not or should not be liable. One document said that "if claims are settled without their scope being narrowed, it is difficult to envisage any living former state ward not having a claim for compensation against the Crown".[277]

It also doubted the genuineness of claimants. One file note, for example, said that the claimants were clearly looking for an "easy pay-out",[278] while another document said "the perception of likely access to compensation may also lead to claims being made opportunistically".[279] The Crown did not want to be taken advantage of, or as the Solicitor-General put it, to be seen as a "soft target".[280] A Cabinet paper recorded the

Crown's view that lawyers were employing a deliberate strategy to get compensation for claims "without having them looked at too closely".[281]

Kāore he taunakitanga i kitea i te āhua ki te ngoikoretanga ā-pūnaha
No evidence of systemic failure

The second factor was the Crown's persistent view that there was no evidence of systemic failure or abuse. As mentioned, records and the Crown's preliminary investigations showed evidence of abuse, but officials considered this evidence fell short of a "widespread culture of abuse"[282] and did not indicate "systemic or endemic failure".[283] They formed the view that this meant there was no justification for a group settlement, apology, or public inquiry. One update to ministers said historic abuse claims lacked evidence of systemic or endemic failure, which was described as "the standard trigger for a public inquiry".[284]

Crown witnesses who gave evidence at our public hearing were unable to tell us what they would consider to be evidence of systemic failure – even though the term appeared again and again in reports on historic abuse claims. At the same hearing the Solicitor-General questioned whether anyone in the Crown has ever really grappled with the question of what systemic failure would look like.[285] In documents from the time, some officials seemed to use the phrase to mean that the claimants were not reporting the same experience – in contrast to Lake Alice, where the complaints were of the same time period, and the same types of abuse by the same individual. Other officials referred to the view that the treatment complained of was consistent with standards of the day, or that the number of claims was low compared to the number of people who were in care, as reasons why they considered that abuse was not "systemic".[286] But this view persisted over the years despite the number of people reporting and making claims for abuse growing into the thousands, and the fact that it quickly became clear that there were groups of claimants reporting common experiences, for example at some social welfare residences.[287]

We find that the Crown was wrong to conclude there was no evidence of systemic abuse or failure, and to conclude that there was no justification for an inquiry or alternative response. Systemic abuse can mean widespread abuse, or that there are system level factors, such as policies, structures and practices, that enabled or facilitated abuse. As Bridgit Mirfin-Veitch told us, "systemic abuse takes us beyond the notion of 'bad things being done by bad people' independent of the system, to a recognition that the system has operated in ways that has both provided the opportunity for abuse to occur or for it to continue unchallenged."[288]

We know from our work in this inquiry that there has in fact been both widespread abuse and systemic failures in the care of children or vulnerable adults. These include understaffing and overcrowding, lack of vetting, supervision and training of staff, cultures of violence in some settings, lack of effective complaint mechanisms and practices in some institutions of actively moving staff around following complaints of abuse. We will be making findings about these and other factors in our reports to come.

Even on the information available to the Crown in the mid-2000s, there was a strong possibility of many of these systemic failings in the institutions that were the subject of the claims. The preliminary investigations into Porirua Hospital, for example, showed evidence of overcrowding and understaffing. The review of records of social welfare residences showed evidence of a "kingpin" culture and violent initiation "rites" that were known to staff.[289] Later investigation of staff records uncovered evidence some staff had been allowed to stay or had gone on to be employed at other institutions, despite allegations of abuse being made against them.[290] If the Crown had taken a broader approach to considering the question of systemic abuse and failure, it might have also taken into account other evidence it had of widespread abuse and systemic issues in care facilities in Aotearoa New Zealand. For example, a report to the Department of Health in 1986 found general substandard conditions and deficiencies of care across psychiatric and psychopaedic hospitals – a report that in part led to the deinstitutionalisation of disabled people.[291] And around the same time that these claims began being made, a report by the National Advisory Committee on Health and Disability in 2003 also found systemic neglect of the health of adults with intellectual disability, including medications being prescribed to deal with behavioural problems.[292]

In short, the information the Crown had at the time more than justified an inquiry or other non-court process that could help uncover the full extent of abuse and neglect, and the causes and contributing factors to that abuse. As it received more claims, the evidence grew: as acknowledged by Garth Young of the Ministry of Social Development's historic claims team, it is now clear "by the sheer fact that we have almost 4,200 claims and more coming in every week that there were certainly a lot of bad apples and it would appear not to be the systems and processes in place to keep that or keep them in check".[293]

The Crown's rhetoric that there was no evidence of systemic abuse or systemic failure became a convenient excuse not to look more widely and risk broadening the scope for more claims. We are confident that any deeper investigation process would have found further evidence of systemic abuse, as we have.

Tauira utu - Potential cost

The third factor, the potential cost of settling with an unknown number of claimants, weighed heavily on the Crown's thinking, particularly if such a settlement were to set a precedent the Crown felt obliged to follow in other cases. The Crown was anxious to minimise this risk to public finances. It wanted to pay out money to different claimant groups in a consistent, principled way, that was a responsible use of taxpayer money. It was also concerned that if claims succeeded in court, this would only make future settlements more expensive and also increase the cost of defending cases as more would go to court.[294]

He nui rawa te utu ka tae atu ki ngā rōia - Lawyers getting too much money

Finally, Crown officials were concerned at the amount of money going to claimants' lawyers. A Cabinet paper in 2001 recorded anecdotal evidence suggesting Grant Cameron Associates received $2.6 million of the first round of Lake Alice settlements as a contingency fee.[295] A 2008 Cabinet paper included a comment that Sonja Cooper received $2.8 million in legal aid funding in the 18 months to 31 December 2007.[296] Reports about the amount of money lawyers were making also appeared in memorandums between officials.[297]

Some officials suggested lawyers were drumming up false or exaggerated claims. The Ministry of Social Development's Deputy Chief Executive of the time, Iona Holsted, even reported concerns in a memorandum that lawyer Sonja Cooper was behaving unethically, and speculated that she might have influenced claimants' memories when gathering evidence, and "may deliberately target periods of time when records are poorest" in the claims she made on behalf of her clients.[298] We find these suggestions entirely unfounded. The ministry's current Deputy Chief Executive, Simon MacPherson, said the language in the memorandum was "inappropriate and regrettable".[299] However, the memorandum was not an isolated piece of correspondence. Other correspondence was suspicious of Sonja Cooper's motives and methods, and the result was that officials could not see past their distrust of her to the victims of abuse she was representing.

Te āhua o tā te Karauna whakahoki - How the Crown responded

Rautaki whakaea nawe - Litigation strategy

Faced with a growing number of claimants, the Crown grappled with how to respond. Cabinet considered alternatives to litigation, such as an inquiry or out-of-court settlement process. However, ultimately it stuck with litigation, in contrast with the approach it had taken with the Lake Alice group. In May 2005, the Attorney-General

set out in a paper to Cabinet the approach the Crown would take to litigating abuse in care claims.[300] It said the Crown:

- acted as a model litigant (although it did not specify what this consisted of – the generally accepted meaning being that it "played fair")
- met liability if established but wouldn't otherwise pay public money without good cause
- avoided ad-hoc mechanisms that "constitute an undesirable precedent for future claims"
- used public resources efficiently in responding to claims.

This was the essence of the Crown's litigation strategy. It also said it would try to settle a claim if Crown Law and/or the relevant government agency considered a claim was meritorious or there was a realistic prospect of liability, but would not settle purely because doing so would be cheaper than defending a claim.

In May 2008, Cabinet confirmed it would not set up any specialised group settlement process, the advice to it being that there was still "no strong or clear evidence... of systemic abuse or failure within the psychiatric or child welfare systems during the relevant periods" and there was currently no basis for considering alternative dispute resolution processes or settlement packages, and any settling of claims after minimal investigation should be rejected.[301] This was despite the increasing evidence of widespread abuse available.

Cabinet accepted an updated Crown litigation strategy that set out a three-pronged approach to historic abuse cases:

- Agencies would seek to resolve grievances early and directly with individuals where practical.
- The Crown would consider settlement for meritorious claims (but did not set out what it meant by 'meritorious').
- The Crown would defend unresolved claims in court.

In adopting this strategy, Cabinet and its advisors showed little recognition of the vulnerability of survivors, the significant difficulties that it knew survivors would face in the courts, or of any moral or non-legal obligations towards individuals abused while in the care of the State. Cabinet also showed no consideration of obligations under te Tiriti or the impact this strategy would have on Māori, despite being aware from at least 2007 that a large majority of claimants were Māori.[302] Nor did it consider the possible domestic or international human rights dimensions to the claims or its response to them.[303]

Ka whakatūhia he ratonga whakarongo - Listening services established

The Crown did, however, set up two forums for claimants who wanted to air their grievances. The Confidential Forum ran from 2004 until 2007, and listened to the experiences of 493 former in-patients, families of in-patients, and staff of psychiatric hospitals.[304] The Confidential Listening and Assistance Service, ran from 2008 until 2015. It heard from 1,103 survivors who had been in State care,[305] though it said it was not able to provide enough opportunity to prisoners to meet the service, and only managed limited engagement with people with learning disability or survivors in prison.[306]

Both services heard people's experience of abuse and helped them access records and social services. The later listening service referred anyone wanting to claim compensation to the appropriate government agency. However, both were narrow in scope. The terms of reference of the Confidential Forum did not allow it to comment on systemic issues, or publicly comment about anything presented to it. Neither service could make findings of fact or liability, and neither could recommend compensation.

He waonga kaha i rō kōti - Vigorous defence in court

The Crown vigorously defended those claims that could not be settled between survivors and the relevant government agencies. Several claimants persisted with this route, despite the significant legal barriers and the traumatic, adversarial nature of the court process. They included brothers Paul and Earl White (not their real names) and Keith Wiffin, who were found to have been abused at, among other placements, Epuni Boys' Home in Lower Hutt, as well as two claimants, known as J and K, who said they had suffered abuse at psychiatric hospitals.

The Crown routinely relied on limitation defences, the ACC bar and immunities under mental health legislation. The Crown was certainly entitled to defend itself according to the law, and the law included the defences just described. The Crown was even obliged under the law to raise some of the defences in court. But by relying on these defences, the Crown created the impression that it was hiding behind technicalities to avoid accountability for serious abuse that happened in its care. It raised the limitation defence, which was optional, even against claims it knew were likely to be true. It also applied to the court to strike out claims brought by seven former psychiatric patients, without individual hearings, on the basis that under the mental health legislation the claims required leave from the court to proceed – something that was no longer available to most claimants because of the strict time limits set out for seeking leave.[307] In making this application, it argued that abuse including serious physical assaults, the administration of electric shocks as punishment, and

solitary confinement, were theoretically capable of being acts of treatment, care, or control, done in pursuance of the mental health legislation, and for which it had immunity.[308]

Despite the Crown's aspirations to act as a model litigant, it did not do so. The conduct of the Crown went beyond mere neutral defence of claims and included:

- requiring claimants to prove facts the Crown knew were likely to be correct
- causing long, avoidable delays and failing to keep claimants adequately informed of the progress of their cases
- failing to disclose relevant information damaging to the Crown case[309]
- opposing name suppression for sexual abuse victims on strategic grounds
- opposing reasonable adjournment requests, despite a lack of prejudice to the Crown, when a claimant's lawyer was without funding
- cross-examining witnesses to suggest survivors should have, as children, disclosed abuse at the time the abuse happened, or avoided the abuse[310]
- cross-examining witnesses to suggest survivors were lying and colluding even when the evidence showed they were more than likely to be telling the truth
- making applications for costs against survivors personally, and making applications for orders that would have required the plaintiff to pay costs if they had not been funded by legal aid.

The Crown pursued these cases with a vigour that demonstrated it was not just concerned about the individual cases, but also about their consequences on the hundreds of cases yet to be brought. Its goal was to secure court decisions that reduced the number of claims it was facing, and lessened the bargaining power of other claimants. But more than that, some of the Crown's conduct during trials seemed deliberately designed to discourage other claimants from seeking redress through the courts.

These tactics, and the impact they had on survivors, are illustrated further in the case studies in Volume 2.

Ka whanake ngā ūmanga i ētahi hātepe kerēme tūmataiti
Agencies develop in-house claims processes

As noted, the Crown's litigation strategy stated it would attempt to settle claims deemed meritorious. The term "meritorious" was not explained in either the 2005 or the 2008 versions of the strategy, and views among government agencies about its meaning differed. Both versions suggested meritorious meant a claim had a good chance of overcoming the legal barriers discussed above, and they referred to settling

claims where there was a "realistic prospect of liability".[311] But the Ministry of Social Development and Ministry of Health both gave evidence that they understood the 2008 strategy required them to settle with individuals who had a credible claim of being abused in State care, regardless of whether legal barriers such as the limitation defence and accident compensation legislation applied.[312]

On this basis, the Ministry of Social Development, Ministry of Education, Ministry of Health and predecessor Crown Health Financing Agency – and more recently Oranga Tamariki – developed their own in-house claims processes to settle abuse claims out of court.

The processes – which continue to run to this day – are described in more detail in the next section below. Individuals can make a claim directly with the agency or through a lawyer without filing a claim in court.

Survivors unhappy with their settlement offer can take their claim to court, yet there they face a difficult battle as the Crown continues to rely on the legal defences available to it. In short, the Crown has full control of the settlement process and, as we will see next, almost guaranteed success in the courts.

Hua o te rautaki Karauna – ngākaurua ana ētahi kaikēreme i ngā wikitōriatanga a te Karauna i roto i te kōti
Result of the Crown strategy - Crown's court successes deter prospective claimants

Survivors had some early successes in the courts. The judge in Leoni McInroe's case refused the Crown's application to strike out her claims without a hearing, and in 2002 and 2003, two survivors established that the State was liable for abuse by their foster parents, and also that the limitation defence did not apply in their circumstances. The successes, however, ended there. The Crown's litigation strategy produced a series of crushing defeats in 2007 and 2008.[313] The claimants were unable to prove they had suffered some of the abuse alleged. And when the court found the claimants had, in fact, been abused in State care, it also found the State was not liable because of limitation and accident compensation legislation, and because the claimants could not prove their abuse in State care had caused them harm. The Crown was also successful in its applications for costs orders. In one case, the court held that a survivor had to pay costs to the Crown for bringing the case, and in other cases, the courts found the claimants would have been liable for costs if they had not been funded by legal aid. In those cases, the judge criticised the Legal Services Agency for funding the claims.

These decisions led the Legal Services Agency to re-examine its decision to grant legal aid to hundreds of other survivors. In 2008, it notified 1,151 people of its

intention to withdraw their legal aid unless they could justify why they should continue to receive it and explain why their claims had sufficient "prospects of success". About 200 claimants lost their legal aid, although about half had it reinstated after seeking statutory reviews or appeals, supplying more information to the agency or making fresh applications. This process placed a significant administrative burden on claimants and their lawyers, and greatly delayed their claims.

Overall, these defeats in the courts highlighted the difficulties survivors faced getting redress through the courts and had a considerable deterrent effect on other survivors considering litigation. Some survivors abandoned their claims after observing the gruelling process other survivors went through giving evidence and being subjected to cross-examination by the Crown, only to have a claim rejected on what seemed to be technicalities.

In addition, the Crown's focus on managing litigation and limiting financial risk meant it focused only on responding to the individual claims brought and resisted a wider response. This minimised the problem and contributed to the invisibility of those unable to bring claims, such as many Deaf and disabled people.

For many survivors, the result is that the only practical option now available to them is the out-of-court claims processes developed by State agencies and administered and closely controlled by them.

Ngā hātepe kerēme a ngā umanga Karauna i waho atu i te kōti
State agencies' out-of-court claims processes

Four government agencies run in-house claims processes, each responsible for a care setting where abuse took place. To date, these claims processes have paid close to $48,000,000 in settlements to over 2,300 survivors, excluding legal costs.[314] A majority of claimants to these processes are Māori, reflecting the disproportionate number of Māori in care historically and today.

Some survivors have expressed satisfaction with the way the claims process treated them and the settlements they received. Many more, however, found the claims processes slow, difficult to navigate and inconsistent in what they offered. They said the processes were cold and transactional, the staff disbelieving, and the apologies insincere. Some have described the process as worse than the abuse itself. Settlement offers varied from agency to agency, and survivors felt they had no choice but to accept the offer, or walk away with nothing. Survivors' experiences and the common features of these claim processes and those run by faith-based institutions are described in more detail in Part 2.5. Here, we summarise each State agencies' claims process and their defects.

Te Manatū Whakahiato Ora - Ministry of Social Development

The Ministry of Social Development runs a claims process for claims of abuse in social welfare settings, such as children's homes and foster care homes, that happened before 1 April 2017. (Oranga Tamariki runs a separate process for such claims after 1 April 2017, the date of its establishment: see below.) The ministry has received more claims than any other – it received over 4000 claims between 2003 and March 2020, more than half of them from Māori survivors.[315] 59 per cent of claims were registered by survivors directly, without the involvement of a lawyer.[316] At June 2020, less than half the claims had been resolved or closed.[317]

The ministry began receiving claims in 2003. In July 2004, the then Department of Child, Youth and Family Services, established an historic claims team (which moved to the ministry when the department and ministry merged two years later). Survivors had to file claims in court before the team would look at them. As new claims began piling up in the courts, the ministry, now responsible for the team, decided to develop a formal out-of-court settlement process. It met a handful of survivors to discuss what they wanted from a settlement process. It also considered the Crown's interests, for example in "risk management and fiscal prudence", and public and political credibility.[318] The ministry would no longer require survivors to file their claims in court. Instead, survivors could make a claim directly with the ministry. Staff in the team would listen to survivors' experiences, review their social work records, assess their claim and make a financial offer to settle the claim. The ministry began using this process in May 2007 to settle claims with legal merit. In 2008, after Cabinet affirmed the Crown litigation strategy which directed agencies to settle meritorious claims, the ministry began using its claims process to settle even those claims where there were possible legal defences, such as limitation or accident compensation legislation.

The team assessing claims was small, and it made slow progress through claims. A large backlog accumulated, and in May 2015 the ministry introduced a "two-path approach" to speed up resolution of claims. It created a new fast-track process available to survivors who had made claims before the end of 2014, to try and clear some of the backlog. Under the fast-track process, the ministry did not do a full investigation of claims, instead conducting only a basic checking of facts to ensure the ministry was legally responsible and the claimant was in social welfare care at the relevant time, and that any named staff or caregiver was working at that location at the time. This allowed survivors to receive settlement offers more quickly. The ministry said its process was to accept allegations at face value,[319] but the offers of monetary payment were moderated so that they had the same distribution as offers made under the full assessment, which often rejected many allegations.[320]

This meant some survivors received an offer corresponding to a lower level of abuse than the abuse included in their claim.[321] The net effect was that offers were lower unless they underwent a full assessment. Survivors could reject a fast-track offer and continue with the full assessment, but would face longer delays and more scrutiny of their claim. Many survivors accepted the fast-track offer because they were struggling financially and reluctant to wait years to settle. Once they accepted, they were not able to go back and ask for a full assessment. The ministry made fast-track offers to just over 700 claimants, and 85 per cent accepted their offer.[322]

The key aspects of the claims process that a claimant would experience today is in large part the same as the full assessment process created in 2007, though the ministry no longer fully investigates each concern. For claimants without a lawyer, the process usually involves a one-on-one meeting with a staff member to explain the claims process and get details on their claim. The ministry takes into account the interview and survivors' records and makes a decision whether it will accept that the abuse happened. At a follow-up meeting, a staff member tells survivors the ministry's decision, and any settlement offer. It offers a contribution towards legal advice on the offer before survivors accept or reject the offer. For survivors with a lawyer, there is typically no meeting. Communication is in writing between lawyers. A settlement offer typically includes an apology, a financial payment, as well as contributions towards legal aid debt and some counselling services. Financial payments range from $1,000 to $90,000, although about 75 per cent range between $10,000 and $25,000. The average is about $20,000. Staff sometimes also help survivors access other services such as ACC, but there was no formal process for referrals.

The ministry's claims process was challenged by Māori. In 2017, a group of survivors and iwi lodged seven claims with the Waitangi Tribunal alleging, among other things, that the ministry did not properly consider tikanga Māori and te Tiriti o Waitangi and did not properly take into account the over-representation of Māori in State care.[323] In response, the ministry undertook consultation with people who were making claims through the claims process, including a specific consultation with Māori survivors.[324] None of the Māori survivors had encountered any Māori staff during the claims process. They said they did not feel the process recognised or catered for their cultural needs, and that they found the process detached and lacking in empathy. Māori survivors wanted a more collective, inclusive approach, based on tikanga Māori.[325]

Following these reviews, the ministry has begun making improvements to the claims process, although it does not expect to completely put these changes into effect for several more years.[326] It has employed more staff from more diverse backgrounds, set up a claimant support team, and streamlined the assessment process, mainly

by not investigating all of survivors' allegations. It is looking at offering new forms of apology, helping survivors understand their personal records, and contacting claimants more regularly throughout the claims process. In October 2020, it began a pilot "wraparound" support service, initially for 15 survivors who had made claims to the ministry. Under the pilot service, a dedicated person, known as a navigator, is assigned to each claimant to help support them through the claims process and to connect to support services. These improvements suggest a genuine intention to be more responsive to survivors. However, the experiences of some survivors, such as David Crichton (whose experience is detailed in Volume 2), suggest that even recently the ministry's process has not met the cultural needs of some survivors. Delay in resolving claims is also still a major issue. At the end of June 2020, there was still a backlog of 2,235 claims.[327]

Oranga Tamariki

Oranga Tamariki runs a separate claims process for claims relating to abuse in care and protection and youth justice settings, that happened after its establishment on 1 April 2017. If the abuse took place both before and after that date, the agency with responsibility for the greater amount of harm will usually manage the claim.[328] Oranga Tamariki has also handled 19 claims relating to abuse before 2017 because the survivors first raised those claims with Oranga Tamariki, and it was considered more practical that the agency continue to look at them rather than require the survivor to engage with another agency. The agency resolved the last five of these claims this year.

Oranga Tamariki distinguishes between a claim, involving an allegation of abuse in the agency's care, and a complaint which tends to be about less serious actions of Oranga Tamariki's staff, caregivers or systems. Any person can make a complaint, via phone or email, or through a feedback page on the website. Steven Groom from Oranga Tamariki told us if a person's complaint includes an allegation they were abused while in Oranga Tamariki's care, it will be treated as a claim, and be put through a separate claims process.[329]

Oranga Tamariki told us it intends its claims process to have consistent outcomes with the Ministry of Social Development where appropriate.[330] However, the process is still under development, and as of late 2020 the agency still had no formal policy setting out the process. Instead, staff rely on a draft policy document and guidance from managers. Oranga Tamariki told us that if a survivor raises a potential claim, the advisor working on the claim will discuss with the survivor and explain the process verbally to them, but there is no formal information about what survivors can expect from the process.[331] The agency told us it would await our recommendations before formally adopting any process.

The Office of the Children's Commissioner has expressed concerns that Oranga Tamariki's internal complaints mechanism is not independent or accessible for children and has emphasised the need for a truly independent monitoring system.[332]

Manatū Hauora - Ministry of Health

The Ministry of Health runs a claims process for abuse that happened in publicly funded health institutions before 1993. From 1993 onwards, legislation provided for complaint mechanisms for complaints of treatment in care, including (since 1996) the Health and Disability Commissioners, and as a result, fewer claims have been made for this period. Any claims for abuse in care that are made about events occurring after 1993 are dealt with by individual District Health Boards, and not the ministry. Outside of the claims process, the ministry has also settled some claims of more recent abuse, for example in private, State-contracted residences for disabled people, and some for abuse in general medical surgical wards of public hospitals prior to 1993.

As already discussed, the group settlement to Lake Alice claimants in 2000 and 2002, and the associated media attention, resulted in an influx of claims about abuse in other healthcare settings. Until 2012, the Crown Health Financing Agency was responsible for resolving these claims. In August 2011, Cabinet decided to disestablish the agency and move responsibility for its 330 or so outstanding cases to the ministry. It allocated $5 million to settle these claims. Crown Law and the law firm Cooper Legal, which represented many of the claimants, formulated a matrix to apportion the money. Settlements ranged between $4,000 and $18,000, depending on the level of abuse and the quality of supporting evidence.[333] Offers also included an apology and payment of legal fees. When the ministry took responsibility in July 2012, new survivors had come forward, and more claims continued to be made.

The ministry established a service to resolve all new claims related to abuse in psychiatric hospitals. The service was modelled on the settlement process run by the Crown Health Financing Agency, but the payment levels were discounted by half to range from $2,000 to $9,000. Chief Legal Advisor to the ministry, Philip Knipe, told us this reduction was to recognise that no legal proceedings or legal costs needed to be incurred.[334]

The ministry continues to respond to redress claims in largely the same way today. When survivors contact the ministry, they are asked to provide basic details about their abuse, records are requested and some research is done. The claim is put in a queue for assessment. Once a claim is allocated to an assessor, they review the records available and if required, may arrange for a phone consultation. The ministry does not assess claims against any hard-and-fast yardstick.[335] Once the response to a claim is approved the ministry makes an offer, usually within four to six weeks

of obtaining claimants' medical records. Offers include a letter of apology and a "wellness payment" of up to $9,000. All contact is in writing (including email) or by phone. Survivors can ask the ministry to review its decision if they are unhappy with the offer.

The ministry maintains a separate claims process for Lake Alice survivors. They receive compensation consistent with the original group settlements. The ministry has taken no active steps to identify or contact any Lake Alice survivors who may be unaware of its redress process. Survivor Patrick Stevens (not his real name), for instance, learned of the process only by chance in 2017 and a year later – just before his death – received $80,000 and an apology for his abuse at Lake Alice.[336] The ministry has not produced any public information about the Lake Alice process or the service for other historic abuse claims.[337]

Te Tāhuhu o te Mātauranga - Ministry of Education

The Ministry of Education is responsible for abuse claims in some schools and other educational settings. Until 2010, it had received only a handful of claims, and it assessed them on a case-by-case basis. The ministry was named in several claims that also related to abuse in social welfare settings. The Ministry of Social Development managed those claims. In 2010, a high-profile conviction of a former staff member for abuse at a residential school led to an influx of claims from other former students of the school. This prompted the ministry to develop a formal claims process.[338] Initially, the process related only to abuse or neglect at residential special schools before 1993. However, the ministry continued to receive claims for abuse that had happened after that period, or at schools that were not residential special schools. In 2018, the ministry extended eligibility to include some claims of abuse after 1993, where the abuse was at residential special schools that were closed, and health camp schools.[339] It also now sometimes considers claims relating to other State schools, for example if the school has closed. However, in general, it is boards of trustees, and not the ministry, that have responsibility for most State schools since 1989. Survivors abused in those schools who wish to make a claim need to approach the individual board. The response can depend on resources, capability and approach of the school board.

Between 2010 and October 2020, the ministry received 177 claims. Over that same 10 year period it resolved just 46 claims, leaving 131 outstanding.[340] The ministry said it had only a small team to handle claims, and the number and complexity of cases had increased in recent times.

The ministry's claims process has scarcely changed since it was set up. After lodging a claim, survivors have a phone conversation with an advisor to discuss their claim. The ministry gathers survivors' records and adds them to an assessment

waitlist. Waiting times are long. If claimants are willing, an assessor will meet them in person to hear their story and what redress they want. The assessor will consider the evidence and prepare an assessment report, which will include recommended redress.

Offers usually include an apology, a financial payment and the cost of legal fees. Payments have generally been between $3,000 and $40,000. The average is about $15,000.[341] The ministry will provide counselling and other services only if asked. A letter explains the ministry's offer, and provides the information the ministry holds. However, explanations sometimes appear opaque and lack detail, which the ministry told us is because in some cases there is only limited information found in records. The ministry website states that claimants who are unhappy with its response "can discuss this with us", and that claimants can provide additional information if they are concerned that certain information has not been considered.[342]

Ngā raru o ngā hātepe kerēme a ngā umanga Karauna
Problems with State agencies' claims processes

Given the haphazard way the claims processes came into existence and how they have scarcely changed since their establishment, it is not surprising they suffer from many defects. The processes have been focused on meeting the interests of agencies and fall well short of meeting most survivors' needs for a process that is open, consistent and principled and provides meaningful redress for survivors. It is hard to overstate the harm these claims processes have caused survivors, with many comparing it to the original abuse.[343] One described having "very dark times" after a hostile meeting with the Ministry of Social Development under their claims process.[344] He said that after a follow up phone call not long after, "I had a full-on breakdown".[345] In the following section, we outline the various deficiencies in these claims processes. Survivors' experiences of these processes are outlined further in section 2.5.

He haurakiraki - Lack of consistency

Each agency has designed its own claims process in isolation from the others. It is true that each is responsible for different care settings and operates within different legal frameworks, but these considerations matter little to survivors, who had no control over which agency was responsible for their care and were often abused in more than one setting.

The Crown did set up an interagency group to look into a State-wide response, and it did produce various documents about the benefits of a uniform approach to redress. But in reality, each agency preferred to settle claims in its own way, and this produced a considerable range of financial and non-financial redress and supports, as set out

in Table One. Several government witnesses told us about the importance of having consistency within and between claims processes so that similar claims resulted in similar outcomes.[346] But, again, the reality has been quite otherwise, and sometimes the differences have been extreme. A person who suffered serious sexual and physical abuse in a social welfare setting might today receive up to $55,000, along with an apology, up to six counselling sessions, a contribution towards legal advice and, in some cases, wraparound support. The same abuse in a healthcare setting might result in a maximum payment of $9,000.

Table One: Forms of redress and support offered under agencies' claims processes

	Ministry of Social Development	Ministry of Education	Ministry of Health	Oranga Tamariki
Financial payments	Payments start at $1,000, but most are between $10,000 and $25,000. The average is $20,000. The highest paid to date is $90,000.	Payments generally range from $3,000 to $40,000. The average is $15,000.	Payments range from $2,000 to $9,000. The average is $6,000. Payments for survivors of Lake Alice Hospital's child and adolescent unit average around $68,000.	Payments range from $3,000 to $31,000. Total amount paid to date is $202,000.
Non-monetary redress	Has offered some non-monetary redress, including for example, tattoo removal, petrol vouchers to allow a visit to a rongoā practitioner, and literacy education.	Ministry prepared to consider suggestions from claimants.	Does not provide non-monetary redress.	May consider services such as access to vocational training, educational assistance and support with job hunting and finding housing.

	Ministry of Social Development	Ministry of Education	Ministry of Health	Oranga Tamariki
Contribution towards legal costs (represented claimants)	Pays two-thirds of legal aid debt with the remainder written off by the Ministry of Justice. Pays "reasonable costs" for claimants not eligible for legal aid.	Pays half of legal aid debt with the remainder written off by the Ministry of Justice. Settlement offers may also include payment of legal fees for those not receiving legal aid.	Pays half of legal aid debt with the remainder written off by the Ministry of Justice. Contribute up to $2,000 to those not receiving legal aid.	Not applicable. All claimants have been unrepresented.[347]
Independent legal advice (unrepresented claimants)	Offers $400 towards an initial consultation with a lawyer. Survivor can discuss with ministry if lawyer requires more time.	Advises claimants they may seek legal advice at any time during the process. Has not funded such advice (except as part of a settlement offer), but would consider if requested.[348]	With one exception, has never offered.	Verbally offered, but no one has taken up offer.
Counselling	Funds up to six sessions, as well as helping survivors access existing counselling services or ACC counselling.[349]	Previously did not offer unless asked, but in 2021 began to offer funding for six counselling sessions with a counsellor chosen by the survivor.	Does not provide counselling.	Verbally offered, but no one has taken up offer.

	Ministry of Social Development	Ministry of Education	Ministry of Health	Oranga Tamariki
Support for Deaf and disabled claimants	Does not proactively offer supports but gives claimants the opportunity to request special supports.	Previously did not proactively offer supports but gave claimants the opportunity to request special supports. Since 2021, the ministry also has a claim lodgement form that asks survivors to identify any supports they want.	No services or supports specifically available to Deaf or disabled people.	No supports offered currently.
Help with financial planning	Does not provide directly. May link survivors with budgeting assistance services where needed.	Did not provide information.	Did not provide information.	Discusses topic informally with claimant.

Payments have also varied within each agencies' processes over time. This has resulted in survivors receiving different amounts for the same abuse in the same or similar settings. For example, Georgina Sammons' settlement offer was significantly higher than that of her sister Tanya, who received an offer under the Ministry of Social Development's fast track process. Georgina said the ministry offered no explanation for Tanya's lower figure, despite the pair suffering much the same abuse, and many of Georgina's allegations not being accepted. "If they really accepted Tanya's information, why was her offer so much less?"[350] Similarly, survivors of Whakapakari youth justice programme received vastly different settlement amounts despite experiencing similarly serious abuse – some survivors who settled under the fast track prosess received $5,000, while a survivor heading towards trial received $85,000.[351] Under Ministry of Health processes, a survivor of Lake Alice child and adolescent unit might receive more than $70,000, while a survivor of abuse in a different psychiatric hospital could receive a maximum of only $9,000.

The agencies' claims assessment processes are also inconsistent. A survivor making a claim to the Ministry of Social Development will typically have a face-to-face meeting with them, the Ministry of Education will offer a survivor an opportunity to

meet with an assessor if they wish, and communication with the Ministry of Health tends to be by phone or in writing only.

The processes also required different levels of proof for the claims. Agencies found it difficult to set out the exact type of proof they required to accept a claim of abuse: one described it as "an art, not a science".[352] However it is clear to us that what proof was required differs between agencies. The Ministry of Health said it takes claims at face value, though survivors with claims that are "less credible" or have a low level of evidence receive lower payments.[353] The Ministry of Social Development does not require a record of the alleged abuse, but does require some supporting information on social work and institutional records, such as a record of behaviour change that may support abuse.[354] It has often rejected parts of claims where it cannot find any such information on record, on the basis that there is "insufficient information" to accept the claim.[355] Several survivors told us this made them feel like they were being treated like liars. The Ministry of Education appears to require even more proof of abuse. It told us it did not apply a high standard of proof – that it only looks for supporting information to show that abuse probably happened. However, the experience of advocates was that survivors often needed more proof to have a claim accepted by the Ministry of Education than it did for the other agencies.[356]

Overall, the redress that a survivor is able to get and the process they have to go through is determined by which agency is responsible for their care and when they made a claim, rather than the abuse they suffered.

Hāngai ana ki ngā umanga, kaua ki ngā purapura ora
Built to suit agencies, not survivors

By and large, State agencies have designed their claims processes to suit the relevant agency rather than survivors, and this shows in the experience of survivors. Again and again, survivors have described how difficult they found the experience of making a claim, and how they wanted more than just monetary payments. In the Ministry of Social Development's consultation with survivors in 2006, survivors told it that they wanted to be listened to non-judgmentally, and have the harm caused to them acknowledged. They also wanted an apology, responses that included services such as therapy, help connecting or reconnecting with whānau, help understanding their care records, education and life skills and for their experience to be used to prevent harm to children in care now.[357] And yet the ministry's historic claims process focused on financial redress. Other agencies also gave no systematic thought to offering non-financial redress, such as therapy or counselling, education, connection or reconnection with whakapapa and other support, as Table One above illustrates. Most agencies offer little in the way of assistance for Deaf or disabled survivors to make a claim. The Ministry of Health in particular has no services or supports specifically

available to disabled people, even though many survivors of abuse in health settings are disabled.

Agencies have also given little consideration to survivors' wellbeing while making a claim. In many instances, staff have shown little understanding of the trauma survivors have suffered and the difficulties of disclosing abuse and making a claim. For example, one survivor, Loretta Ryder, said she was asked deeply personal questions by the Ministry of Social Development's claims contact centre over the phone. "I started crying because I was on the phone while at the garage getting my car fixed and I was shamed."[358]

At the time of our hearing, only one agency, the Ministry of Social Development, routinely offered counselling to survivors making a claim to help them in the process. Very recently, the Ministry of Education has also begun doing this. The Ministry of Social Development has also recently begun to pilot more extensive forms of support for claimants, such as support when receiving records and help accessing other services. It is also investigating further non-financial redress options, such as connection or reconnection with whānau and a formal channel to pass information back to Oranga Tamariki to support improvements to current care systems. This has been well-received by advocates so far, but much of the plan is yet to be rolled out.

He whāiti rawa te titiro - Focus too narrow

The claims processes are designed to focus only on examining the merits of each claim as made by an individual survivor of abuse. None of the processes investigate abuse in a more systematic way. Similarly, none of them connect what they learn with current care agencies and institutions to make sure similar abuse is prevented in future, despite this being a clear priority for so many survivors. The Ministry of Social Development is only now looking to improve how its historic claims team can provide anonymous information to Oranga Tamariki to support improvements in the current care system.[359]

Nor does any of the agencies' claims processes examine or respond to the harm to survivors' whānau and the wider community, or the intergenerational impacts of abuse. As we discussed in Part 1, addressing this harm is an integral part of healing and restoration in a model that is informed by tikanga Māori .

Kāore i tino motuhake - Lack of independence

It is very difficult for the agencies to be truly impartial or independent because, in running their own claims processes, they are, in essence, investigating themselves. They have the final say on what allegations they accept and what settlement offer they make. At two of the agencies, the Ministry of Social Development and Ministry of Education, some claims assessors previously worked for the agency, undermining

public perception of their impartiality. All four agencies said their claims team was structurally separated from the rest of the organisation, and they maintained their claims processes were impartial and gave rise to no direct conflict of interest. The Ministry of Social Development said it had processes in place to manage any direct conflict of interest with staff that did arise.

However, survivors definitely see a conflict of interest, especially when an agency is defending court cases and determining claims at the same time. Others also see this problem: there have been calls for an independent body to resolve claims from, for example, the Human Rights Commission in 2011, the Confidential Listening and Advice Service in 2015, and the Ministry of Social Development's consultation with Māori survivors. In our view, it was a particular affront to Māori not to have a process independent from the Crown, given the Crown's role in colonisation and the taking of Māori children and vulnerable adults into care.

No independent oversight of the claims processes, or means of independently reviewing the agencies' decisions, exists. Survivors have no appeal to an independent adjudicator beyond the general right of complaint to the Ombudsman. The Ministry of Health and Ministry of Education told us they will review their decisions if claimants provide further relevant information, and since 2020 the Ministry of Social Development will also revisit decisions in very limited circumstances. None of these reviews are independent of the agencies.[360] Survivors often do not know that this option is available.

The agencies said survivors can go to court if they dispute their factual findings or go to the Ombudsman to challenge agencies' decisions. However, the agencies' continued raising of the limitation defence makes use of the courts to make findings of fact not viable for most survivors. And when the Ombudsman recommended one of them reverse a decision it had made – the Ministry of Social Development over its refusal to consider the claim of a deceased person – it chose not to follow the recommendation.[361]

Kāore i tino kitea tā te Karauna whakamana i ngā mātāpono, i ngā tikanga rānei o te Tiriti
Inadequate recognition of tikanga Māori and Crown's te Tiriti obligations

The agencies have given very little consideration to the Crown's te Tiriti obligations when developing or running their claims processes, even though agencies were aware, as early as 2007, that a majority of claimants were Māori.[362] They have not involved Māori in the design of the claims processes and – until recently – have carried out very limited consultation with Māori, about what Māori want from such a process. The claims processes have very little recognition of tikanga Māori in the

way they operate and offer very little culturally suitable support or redress. Nor have there been many Māori amongst the agency staff responding to claims. The agencies' current actions or proposals to involve Māori, and incorporate tikanga Māori into their settlement processes are tentative and limited in scope, especially given the Crown's awareness of its te Tiriti and human rights obligations in this area.

Only the Ministry of Social Development has consulted with Māori. It carried out very limited engagement with Māori before setting up its claims process in 2007: it informally consulted nine survivors, six of whom were Māori. However, it did not actively seek Māori involvement, and its reports of the consultation did not acknowledge that they were Māori or any particular needs of Māori survivors.[363] A decade later, in response to claims filed with the Waitangi Tribunal, it hired consultants to run workshops with 34 Māori survivors and some professionals. This consultation informed some new initiatives, including an effort to diversify staff, and trialling processes to allow whānau involvement in the claims process.[364] It is also investigating the possibility of including whānau connection or reconnection in redress packages.[365] Since our redress hearing, the Ministry of Education has also introduced a claim lodgement form that asks survivors if they would like the ministry to use a kaupapa Māori approach in the claim process.[366] These measures, however, have come late and are only a small step towards giving effect to the Crown's te Tiriti obligations and recognising tikanga Māori. Other suggestions from the consultation in 2007 that have not been adopted include involving Māori survivors in the design of the claims process and allowing claims on behalf of deceased people.[367]

Table Two: Recognition of te Tiriti and tikanga Māori

	Ministry of Social Development	Ministry of Education	Ministry of Health	Oranga Tamariki
Involvement of Māori in design	Limited targeted consultation with Māori in 2018 in response to claims lodged with the Waitangi Tribunal.	No involvement of Māori as of October 2020. Ministry intends to consult with Māori in future.	No involvement of Māori in process design.	No involvement of Māori in design of initial process. Agency intends to consult in future.[368]
Recognition of tikanga Māori and te Tiriti in process	Currently trialling initiatives to incorporate more tikanga Māori, such as incorporating more whānau involvement in the claims process, and investigating possibility of whānau connection or reconnection as part of redress package	No formal recognition as at October 2020. The ministry has told us it now asks survivors about kaupapa Māori preferences when they lodge a claim.	No formal recognition. Open to providing a process consistent with tikanga Māori and te Tiriti, if requested.[369]	Still working on how to recognise tikanga Māori and te Tiriti in process
Inclusion of Māori staff in claims teams	Increased diversity in new hires since 2019, including by using a Māori and Pacific Peoples recruitment agency. In Auckland unit, 21 per cent of staff are now Māori.	Since October 2020, claims team has expanded to seven assessors and 12 staff, two of whom are Māori.	Did not provide information.	One Māori staff member within a small team of three staff.

Kāore i tino whai wakaaro ki ngā haepapatanga tika tangata
No consideration of human rights obligations

The agencies did not consider survivors' human rights, whether those guaranteed under international conventions to which New Zealand is a signatory or those set out in the New Zealand Bill of Rights Act 1990, when designing the claims processes. None of the four agencies expressly considered the State's obligations to provide redress for breaches under, for example, the United Nations Convention Against Torture, or the United Nations Convention on the Rights of Persons with Disabilities, and nor do they consider these conventions when determining claims.

Since the early 2000s, many claimants have alleged breaches of the New Zealand Bill of Rights Act 1990, and asked for larger settlements in recognition of these breaches.[370] However, none of the four agencies has formulated a policy on how to take into account potential breaches of the 1990 Act in assessing claims.

When deciding how much to offer a claimant, neither the Ministry of Health nor Ministry of Education consider if the allegations amount to a breach of the New Zealand Bill of Rights Act 1990.[371] At the State redress hearing, Oranga Tamariki told us it would take into account alleged human rights breaches in considering the final five claims it was assessing (which have now been resolved). It has no formal policy, but plans to set out how it will consider human rights breaches in its new redress process. In 2016, the Ministry of Social Development decided it would begin to recognise potential New Zealand Bill of Rights Act breaches in payments under its full assessment process.[372] However, it says that currently any claim identified as having a Bill of Rights Act component cannot be progressed until the Ministry has considered advice from Crown Law and finalised its approach to these types of claims.[373] Survivors whose claim has been delayed due to a potential breach receive little communication from the ministry and are not even informed of the particular reason for the delay.[374] The Bill of Rights Act claims were not considered under the two-path approach and the ministry has no plan to provide a remedy to those who suffered breaches.[375]

Kāore he tūāpapa mātāpono hei whakatau i ngā utu pūtea
No principled basis for determining financial payments

The agencies have no principles they draw on to determine what is a fair financial payment, such as calculating the cost of the harm suffered, comparing to court ordered payments in other contexts, or comparing to payments made under redress processes for claims of abuse internationally. The agencies go to some effort to be internally consistent in what they offer, but that has nothing to do with the fairness of claims per se. Even then, we have found that internally payments have not been consistent.

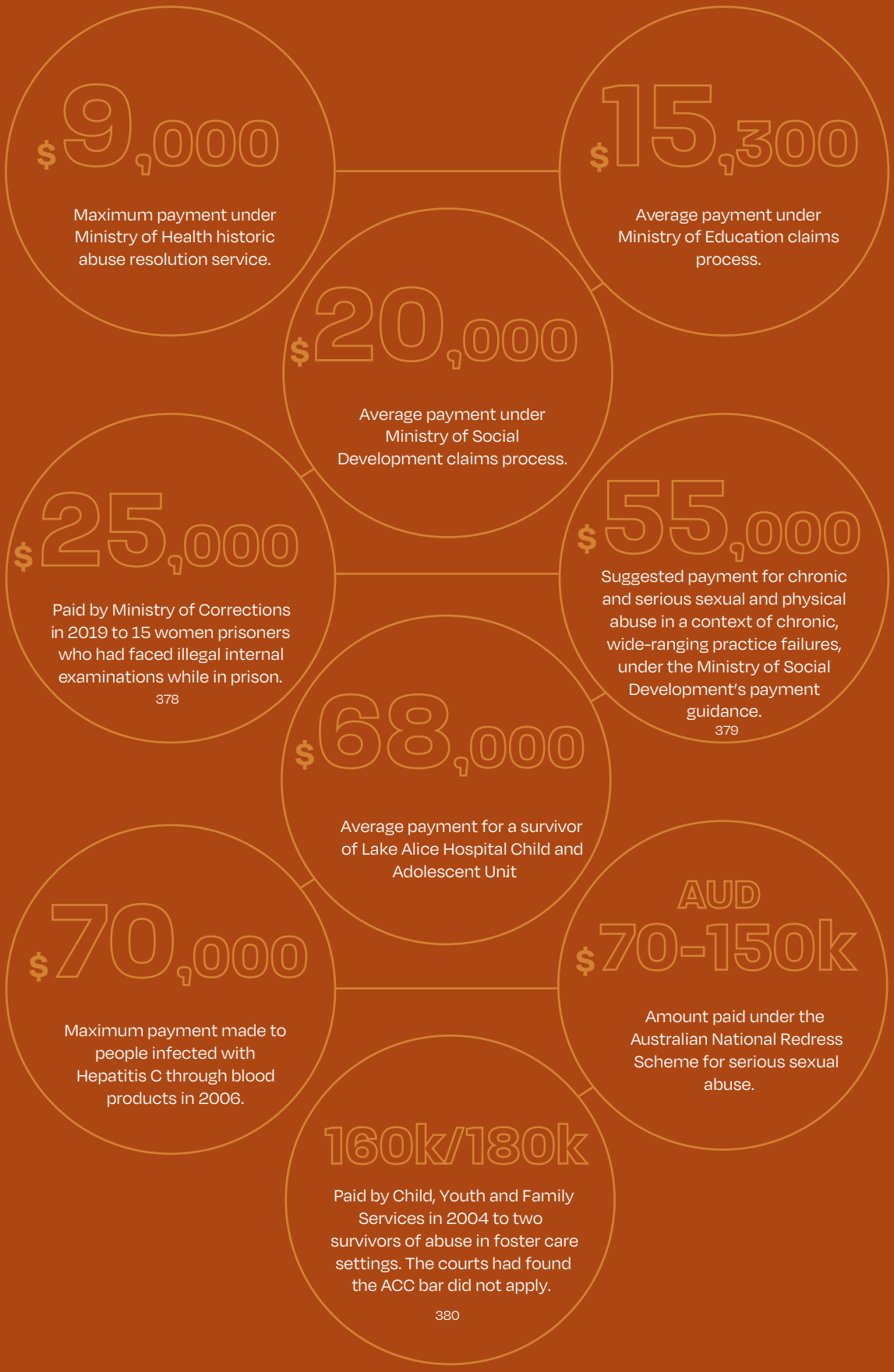
The Ministry of Social Development told us it determined early settlement offers by comparing to previous settlements made by Child, Youth and Family, lump sum payments under ACC, and exemplary damages awards made by the court. However, from 2008, it focused solely on ensuring offers were consistent with past payments it had made under the claims process for similar levels of abuse. The Ministry of Education and Oranga Tamariki loosely followed payments by the Ministry of Social Development. However, neither questioned how the ministry arrived at its payment levels and whether they were adequate or fair.[376] The Ministry of Health did not

compare itself to other agencies, but did look at previous payments made by the Crown Health Financing Agency when it was determining settlement amounts under its claims process. However, the amounts of these previous payments themselves were not based on principle, but rather on finding a way to fairly distribute the $5 million set aside to resolve the agency's claims among the 300 or so outstanding claimants.

No agency witness could point to any principled basis for determining an appropriate settlement amount. In truth, payment amounts are arbitrary.

The agencies all told us their payments are not designed to compensate survivors for the harm or damage suffered, but rather are intended as an acknowledgement of the abuse suffered, or (in the case of the Ministry of Health) to aid wellbeing. The payments are very low when compared with other payments made by the State, for example in response to one off instances of arbitrary detention or delay in releasing records. One survivor questioned why women in prison who were subjected to internal examinations were awarded $25,000 compensation, compared to the $20,000 she was offered under the fast-track process for the abuse she suffered in care throughout her childhood. She expressed frustration at this inconsistency, describing it as "injustice within the system, it needs to change".[377]

Diagram Three: Comparison of amounts made under State agency claims process with other payments



Ruarua noa iho ngā korero mō ngā hātepe e wātea ana ki te makiu
Lack of publicly available information on process

With the exception of the Ministry of Social Development, agencies publish little information about their out-of-court claims processes and how they work, including the criteria they use to determine payment amounts and the reasoning for accepting or rejecting allegations. This is a source of frustration for survivors and advocates. No agency provides information in accessible forms for those with learning disability or low literacy levels.

Prior to 2020 the Ministry of Education had only basic information on its website about who was eligible to make a claim. In March 2020, it added useful information about what survivors could expect in the claims process, including a meeting with an assessor. But there is still nothing about what its assessors will take into account, what types of abuse it recognises, how much money it may offer and many other things besides.[381] It provides survivors who make a claim with a decision including a response to each allegation, but does not provide the report of the assessor showing the detailed reasoning for how the assessor arrived at decision, as it considers the report legally privileged.[382]

The Ministry of Health still has no information at all on its website about its claims process, despite telling us a year ago that it had drafted material to publish there. It told the Waitangi Tribunal the same thing in 2017 when the tribunal raised this criticism.[383] Philip Knipe for the ministry told us that despite this lack of information, he was confident potential claimants had enough information to make a claim because "official and well-publicised channels" for making complaints had existed for many years.[384] We disagree, and survivors themselves have told us they were unaware of the claims process.

Oranga Tamariki published information about its claims process not long before the inquiry's State redress hearing, and told us at the hearing it should have done so much sooner.[385] The information simply tells people that claims of mistreatment in care can be made and gives contact information. It is not easy to find on the website: to reach the page, it is necessary to scroll to the bottom of the homepage, click on "compliments, complaints and suggestions" then under the heading "feedback" there is a link to "claims".[386]

In contrast, the Ministry of Social Development has now published an extensive amount of information about its claims process, including a brochure outlining the process for claimants.[387] It used to withhold the criteria it used to determine the amount of payment offered, because it didn't want claimants to tailor their claims to meet its payment thresholds.[388] However, after a complaint was upheld by the Ombudsman, it also published these criteria on its website.[389]

Ruarua noa iho ngā rauemi, ā, he takaroa i ōna wā
Inadequate resourcing and long delays

All agencies' claims processes are inadequately resourced. They are unable to keep up with the number of claims or offer fair payments. The processes have often been run by small teams and, consequently, suffered long delays. In October 2020, Oranga Tamariki had three employees working on their claims process, while the Ministry of Education had five full-time employees, plus external assessors (in the year since the State redress hearing the team has expanded to 12 full-time employees). Funding limitations have also affected the size of monetary payments offered to survivors through the claims processes.[390] It is critical to ensure organisations that are providing redress for abuse in care claims are well-resourced. If they aren't, claims processes will continue to be delayed or may sacrifice thoroughness for speed and lower payments, as with the Ministry of Health's wellness payments.

Some claimants have experienced particularly long delays. Claims by survivors who had been convicted of very serious crimes, such as murder, child molestation and rape, were halted between 2010 and 2017, while the government considered introducing policy to restrict their use of settlement payments. It was not until December 2017, when the then Government decided against introducing policy on this matter, that these claims were resumed, and they were included in the Ministry of Social Development's two-path process.[391] Others face delays as their claim involves a potential breach under the New Zealand Bill of Rights Act 1990, as noted above. Survivors with these types of claims in the Ministry of Social Development claims process are being kept waiting until the ministry finalises an approach to this issue.

These lengthy delays can disadvantage survivors, who may spend years trying to seek redress through a government agency, only to lose the opportunity to make a civil claim if it takes them beyond the limitation period. To prevent this, survivors must lodge a claim in court to preserve their rights. This is a step survivors may not be aware of or may find too expensive or difficult. Survivors making a claim to the Ministry of Social Development are now exempt from this, after Cooper Legal and the ministry agreed the ministry would not rely on the time the survivor spent making a claim through its claims process if they later made a claim in court. There is currently no similar arrangement in place with other agencies.

Whakarāpopototanga o ngā kitenga - Summary of findings

We find that in developing a response to allegations of abuse in care, the Crown:

- adopted a strategy aimed primarily at managing financial and legal risk, rather than ensuring survivors were fairly treated
- failed to recognise, investigate or respond to signs of systemic abuse and systemic failures
- failed to consider its obligations under te Tiriti o Waitangi, and those under international human rights conventions.

We find that Crown Law:

- developed an overly adversarial culture in abuse in care cases, and lost sight of the people behind the claims who were abused while in the State's care.

We find that the Ministry of Social Development, Ministry of Health, Ministry of Education, and Oranga Tamariki:

- developed out-of-court claims processes in an ad hoc, reactive and siloed way
- have not provided fair and consistent redress for abuse in care
- failed to provide an independent means for survivors to have their claims of abuse in care resolved
- did not involve survivors, particularly Māori survivors, in the design and operation of their claims processes
- failed to adequately take into account the Crown's te Tiriti o Waitangi obligations in their claims processes, or incorporate tikanga Māori in them
- failed to consider international human rights obligations, including under the Convention on the Rights of Persons with Disabilities, in designing their redress processes
- failed to provide redress that is accessible to Deaf and disabled people, or adequately consider the accessibility of their claims processes
- have no principled basis for determining the size of financial payments made in their claims processes
- have been too slow in considering the New Zealand Bill of Rights Act 1990 when they consider claims

- except for the Ministry of Social Development, have not published sufficient information about their claims processes and how they assess claims
- do not take into account the impact of abuse on survivors' whānau and communities, or intergenerational harm in their responses to abuse in care
- have not adequately investigated systemic causes of abuse to prevent further abuse in care.

"I thought that perhaps my parents would not believe me. I was not prone to telling lies, but at the time it was probably unthinkable that a Marist Brother would be capable of such behaviour"

2.4: Hātepe a ngā wāhi whakapono
Faith-based institutions' processes

We examined the redress processes of 14 faith-based institutions. Some had reasonably well-developed processes, others basic ones, and others still had no processes at all. We concentrated on three institutions in particular – the Catholic Church, Anglican Church and The Salvation Army – because of the number of claims of abuse made about these institutions. All three operated and provided comprehensive care and welfare services during the period under investigation.

The Anglican and Catholic Churches asked that this inquiry cover faith-based care. We began looking into them and The Salvation Army in early 2020, after private sessions with people who told us about their experience of abuse and neglect in the care of these churches. In November of that year, we heard from survivors in the faith-based redress hearing. In March 2021, we heard from church representatives about their redress processes. We have also drawn on evidence from witnesses who did not give oral evidence, survivors who had private sessions and documents received from churches and other entities in response to formal notices to produce material. Evidence from other hui and roundtables has also been considered.

The approaches taken by these faith-based institutions differ greatly and are summarised later in this report.

He ārai motuhake kei mua i ngā purapura ora tūkinotanga nō ngā wāhi whakapono
Survivors of abuse in faith-based institutions face specific barriers

For many survivors of abuse in faith-based institutions, there have been significant barriers to disclosure of abuse, and further serious issues with seeking accountability or redress. Historically, faith-based processes have not done enough to reduce or resolve these barriers. When abuse has been disclosed, faith-based institutions have often responded with disbelief and acted to protect their own reputations and interests.

> *"I have told so many priests about the abuse I have suffered in confession and have only received penance in return. Not one ever told me it was a crime or gave me advice, so I believed it was my sin to carry."*[392]

People in religious ministry were regarded as close to God and not able to do wrong. They are given high status in their communities. As a result, some survivors of abuse within the church have feared they would not be believed by their whānau, their communities, or the institutions. Mr G told us he was reluctant to disclose his abuse by a Marist Brother:

> *"I thought that perhaps my parents would not believe me. I was not prone to telling lies, but at the time it was probably unthinkable that a Marist Brother would be capable of such behaviour."*[393]

In many cases, the abusers of children maintained the victim's silence through threats of physical, reputational or spiritual harm. A culture of secrecy in some churches has been a barrier to disclosure of abuse. It has undermined survivors' understanding of what was done to them, and confidence that any disclosure would lead to accountability, let alone effective redress. We heard from several survivors that churches had responded to disclosures of abuse by moving the abuser to another school or institution, or moving them overseas, or encouraging them to retire or resign without facing any accountability for their actions. One survivor of abuse by a Catholic priest told us: "Everything to do with abuse within the Catholic Church is kept secret – everything is kept silent to protect the priests, and they [the Church] just move them on."[394]

Mary Marshall said she could not trust anyone in the Catholic Church. It would protect its members and reputation before looking after survivors' needs.[395] Ms CU told us of the Catholic Church supporting a Catholic priest who was facing sexual misconduct allegations.[396] Another survivor, Gloria Ramsay, told us:

> *"The church should never be left to investigate its own complaints. It has a one-sided agenda. Clergy first. The 'faithful' members of the church who become victims of abuse, are at the bottom of their priority."*[397]

A survivor of abuse in a Salvation Army boys' home expressed similar concerns, telling us that when he first confronted the church in 2003 about his experiences "they pretty much brushed me off". It was implied he might have schizophrenia.[398] After this experience he was put off making any formal complaint until some years later when he had legal representation.

The Catholic Church, Anglican Church, and The Salvation Army acknowledged there have been, and remain, significant barriers for survivors to access redress. All three faith-based institutions committed to addressing these barriers.[399]

Catholic Church leaders further acknowledged that the status and authority given to priests and religious leaders creates barriers to accessing redress and healing.[400] This can be stronger for cultural groups. Cardinal Dew, Catholic Archbishop of Wellington,

acknowledged, for example, that such issues may exist in Pacific communities within New Zealand and should be addressed.[401] The Salvation Army acknowledged the decrease in claims could be a result of survivors not knowing about the Army's claims process, and committed to increasing information and transparency.[402] Anglican Bishop Ross Bay accepted the Church has largely not taken account of survivor experience and need, nor the aspect of trauma that has been woven through their life and how this impacts on a survivor's ability to access redress.[403]

Tirohanga whānui o ngā hātepe a ngā wāhi whakapono
Overview of faith-based institutions' processes

Most faith-based institutions faced with reports of abuse that we evaluated have attempted to develop a claims process. We have found the processes in many cases to be inadequate, some because their processes prioritised church needs over those of survivors.

> *"We are seen mainly as threats to the church both financially and morally … Threats to be dealt with rather than human beings."*[404]

We heard from many survivors who had tried to tell a faith-based institution about abuse, and found the response to be slow, adversarial, poorly formulated, lacking in transparency and difficult to navigate. Survivors also said they were rarely treated with empathy and were often disbelieved, or their accounts minimised. Processes and staff at times lacked the resources or training to provide culturally appropriate redress to survivors. Outcomes were inconsistent. They differed according to which institution survivors were abused in, and who they made their claim to, as well as whether they had legal representation, or could afford legal representation. Monetary payments varied significantly, even within institutions (for example, between each Anglican diocese and between each Catholic diocese). Most settlements consisted of a financial payment, an apology and limited counselling. The clear verdict of survivors we heard from was that processes were unsatisfactory and often re-traumatising.

Hāhi Katorika - Catholic Church

Whakatakotoranga me te whakahaeretanga o te Hāhi Katorika i Aotearoa
Structure and governance of the Catholic Church in Aotearoa New Zealand

The worldwide Catholic Church, sometimes called the "universal church", is made up of many "particular" or "local" churches, each under the leadership of a bishop appointed by the pope. The pope, who is the bishop of Rome, is the leader of all these local churches. The Holy See is the name given to the Catholic Church's central government and is led by the pope. It operates from the Vatican City State, which is an independent sovereign territory within Italy.[405]

The Congregation for the Evangelisation of Peoples has oversight of Aotearoa New Zealand dioceses. Only the pope can appoint and remove bishops or intervene in dioceses.[406] Bishops are required to make a profession of faith and oath of fidelity to the Holy See.

The Catholic Church in Aotearoa New Zealand is territorially divided into one metropolitan archdiocese, and five suffragan (regional) dioceses. The Archdiocese of Wellington with the five other dioceses in Aotearoa New Zealand constitutes a province as determined by the pope. The metropolitan is the senior bishop of the province.[407] Since 2019, the metropolitans around the world, including Cardinal Dew, as Catholic Archbishop of Wellington, have had a specific role and responsibility in responding to reports of abuse or failing to respond to a report of abuse by bishops within their province under "Vos Estis Lux Mundi".

Dioceses are made up of various parishes, churches, schools, and other affiliated entities and institutions. Each bishop appoints priests and assistant priests, and ensures they fulfil their obligations as priests.

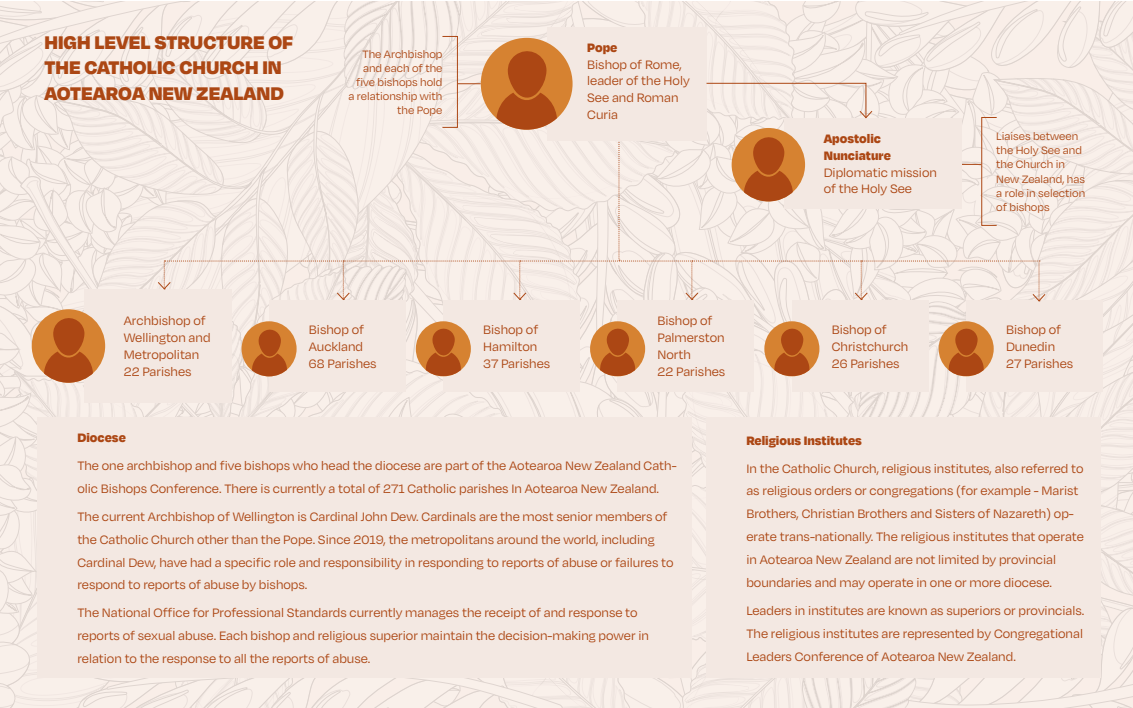
Some religious institutes have both religious brothers and priest members (like the Society of Mary, known as the Marist Fathers), some only religious brother members (like the Marist Brothers) or only religious sister members (like the Sisters of Nazareth).

The religious institutes operating in Aotearoa New Zealand are not limited by diocesan boundaries and may be in one or more dioceses, depending on the agreement of local bishops. Bishops are required to exercise pastoral care for all the people of faith (Catholics) within a geographical region (diocese), including members of religious institutes. Alongside the dioceses and religious institutes, there are many, mostly independent and self-governing lay organisations. These are both large and small with a variety of ownership structures and legal standing. Catholic schools were owned and operated by dioceses and religious institutes before 1975. From 1975 they were integrated into the State system. The land and buildings continue to be owned by a church authority, such as a bishop, religious institute or trust/company established for this purpose.[408] The bishops, religious superiors/leaders or trust/company continues to have proprietorship of these Catholic schools but are not involved in the day-to-day operation.[409]

The National Office for Professional Standards currently manages the receipt of and response to reports of sexual abuse against clergy and religious under Te Houhanga Rongo – A Path to Healing protocol. All reports of other forms of abuse are managed by the relevant bishop, religious superior or catholic organisation. Each bishop and religious superior, or leader of a church organisation have the decision-making

power in response to all reports of abuse. Diagram four provides a simple overview structure of the Catholic Church in Aotearoa New Zealand.

Diagram Four: Overview structure of the Catholic Church in Aotearoa New Zealand



Ngā hātepe a te Hāhi Katorika - Processes of the Catholic Church

I mua i Te Houhanga Rongo – A Path to Healing
Before Te Houhanga Rongo – A Path to Healing

Prior to the 1990's, Catholic Church leaders responded to reports of abuse in an ad hoc manner, usually under conditions of great secrecy. Few records were kept, and even when reports of abuse were documented in some way, records were often incomplete.

Cardinal Dew has acknowledged the approach of the Catholic Church to redress and cases of abuse before 1985 was not well handled.[410] Survivors were often not believed. Offending priests were transferred and offending continued, and, as Cardinal Dew told the inquiry, in relation to the years before 1985, "that was a terrible time and it should never ever have happened like that."[411] He also told the inquiry there were a lack of guidelines around redress, and any requests were likely dealt with on an ad hoc basis.[412]

During the period 1990-1998, bishops and leaders of religious institutes used various interim protocol documents when responding to reports of sexual abuse.[413] In 1994, the leaders of Catholic religious institutes, as members of the Congregational Leaders

Conference of Aotearoa New Zealand, published a draft document called "Suggested Procedures in Cases of Allegations of Sexual Abuse by a Religious" which was revised in 1995 and approved in 1996.[414] The religious institutes agreed to publish the procedures, but there is no evidence all the religious institutes agreed to follow the same process.

Between 1990 and 1992, the New Zealand Catholic Bishops' Conference (Bishop's Conference) sought advice on the establishment of a "protocol" for bishops and religious superiors/leaders to use when responding to allegations of sexual misconduct.[415] The Bishops' Conference established a small working party to review, adapt, and revise protocols developed overseas for recommended use in our country.

In 1993, the Bishops' Conference developed a document, Catholic Church Guidelines on Sexual Misconduct by Clerics, Religious, and Church Employees, which is sometimes referred to as the "Provisional Protocol".[416] It dealt only with sexual misconduct. Despite the title, the contents of the document are focused on sexual misconduct by clergy.

The guidelines recommended the six Aotearoa New Zealand bishops each set up an advisory committee to assist with responding to reports of abuse.[417] The committees were known as the "Sexual Abuse Protocol Committees" or "Professional Standards Committees".

The 1993 Provisional Protocol represented an effort to provide a more consistent response to reports of sexual abuse by priests and religious than had previously been the case. However, as noted earlier, it was of limited scope and its primary focus was dealing with alleged abusers rather than responding to victims and survivors. Also, Catholic Church authorities did not always know about the Provisional Protocol, nor did they always follow it. Although the current and previous versions of Te Houhanga Rongo – A Path to Healing state that the protocol was first "adopted" in 1993, there is no evidence dioceses or religious institutes collectively agreed to any national policy before Te Houhanga Rongo – A Path to Healing in 1998.

Ngā hātepe a te Hāhi Katorika i te wā tonu nei - Catholic Church processes now

In 1998, Te Houhanga Rongo – A Path to Healing: Principles and procedure in responding to complaints of sexual abuse by Clergy and Religious of the Catholic Church in New Zealand was issued. This represented an attempt to shift towards a consistent national process for responding to reports of sexual abuse.[418]

Te Houhanga Rongo – A Path to Healing relates only to reports of sexual abuse by clergy or male and female religious. It does not extend to reports of abuse against lay employees or volunteers. Nor does it extend to reports of other forms of abuse.

Individual Catholic Church authorities developed their own policies and processes to address reports of abuse falling outside of Te Houhanga Rongo – A Path to Healing.

Te Houhanga Rongo – A Path to Healing requires each bishop to establish an Abuse Protocol Committee and urged each religious institute to make use of the services of those committees when required. The primary functions of the Abuse Protocol Committees were to:

- receive and investigate reports of abuse
- advise the respondent and receive their response
- make recommendations to the bishop or religious superiors leaders on findings and outcomes relevant to the report.[419]

In 2004, the National Office for Professional Standards was established by the Mixed Commission.[420] From 2004 to 2017 the National Office for Professional Standards provided support to Catholic Church authorities on handling reports of sexual abuse. Catholic Church leaders continued to manage the response to all abuse reports, also making decisions about how to respond to survivors of abuse. Processes and outcomes varied between Catholic Church authorities.[421]

From 2017, the National Office of Professional Standards managed receipt and response to the reports of sexual abuse. The work of the diocesan/regional Abuse Protocol Committees was moved to a single entity titled the Complaints Assessment Committee which reviews the reports of sexual abuse received by or passed to the National Office for Professional Standards.[422] The terms "complaint" and "complainant" have been commonly used by members of the Catholic Church to describe reports of abuse made in the context of Te Houhanga Rongo – A Path to Healing protocol, and those people who come forward as part of that protocol to disclose their experience of abuse.

Kāore i whakamana i ngā herenga ki te Māori
Failure to honour commitments to Māori

We found no evidence that the Catholic Church involved Māori in the design or implementation of redress protocols or policies, including Te Houhanga Rongo – A Path to Healing. The Catholic Church said it regarded engagement with Māori as extremely important but made no meaningful effort to engage with Māori on redress process design. Despite the Catholic Church coming to Aotearoa New Zealand to "look after" Māori.[423] The Bishops Conference made a bicultural commitment to Māori in 1990, before the development of Te Houhanga Rongo – A Path to Healing.[424] The Church's adoption of a reo Māori name Te Houhanga Rongo – A Path to Healing is the only expression of biculturalism in the document. Te Houhanga Rongo – A Path

to Healing does not mention Māori, tikanga Māori, or te Tiriti. There is no evidence that the way Te Houhanga Rongo – A Path to Healing was delivered showed the commitments made by the Catholic Church to Māori.

The current head of the National Office for Professional Standards accepted Te Houhanga Rongo – A Path to Healing did not include anything that reflected te Tiriti, tikanga Māori, aspects of Pacific people's culture or the accessibility needs of disabled people or Deaf people.[425] There is no requirement for staff, including the committees established to consider claims and assessors used to investigate claims, to have training in tikanga Māori or experience of Māori in care. Currently, none do.

Catholic Church authorities have not collected data on survivors' cultural background or risk factors in their lives, and have not understood the nature or impact of abuse on these people. During the course of the inquiry, the Catholic Church said it would begin a research project into the experiences of Māori in the care of the Catholic Church. At the time of this report, this work is still in development.

Kaupapa here me te hātepe - Policy and process

The four principles of the current version of Te Houhanga Rongo – A Path to Healing are:

- a compassionate response to a Complaint: we will treat all people involved through a complaint with compassion, respect and fairness
- any attempt to sexualise a pastoral relationship is a betrayal of trust, an abuse of authority and professional misconduct
- in any inquiry, the quest for truth will be paramount, and will be based on the principles of natural justice
- any person responsible for abuse will be held to account.[426]

With the approval of the chair of the Complaints Assessment Committee, the National Office for Professional Standards appoints an investigator. The investigator is under a contractual relationship with the Church to carry out the investigation and is therefore not fully independent. According to the Catholic Church, this arrangement is a normal contractual arrangement. The investigator is not required to be trained in the impact of tūkino, or abuse, harm or trauma, or in tikanga Māori.

The National Office for Professional Standards currently administers the policy and is now the contact point for survivors making reports of sexual abuse. Its director and staff do not make decisions on reports, but rather triage reports to ensure they are within the scope of the policy and, with the approval of the Complaints Assessment Committee chair, they appoint an investigator.

The National Office for Professional Standards director, Virginia Noonan, told us that its role was not to believe or disbelieve anyone who came forward to disclose abuse. Ms Noonan's evidence is that the complaint process is an inquiry rather than a listening process.[427] Its function is to expedite the processing of reports of sexual abuse. Expert Dr Doyle told us that the first response to a survivor should be "a human response, not a bureaucratic approach".[428]

An investigator contacts the survivor directly and prepares a report which goes to the Complaints Assessment Committee, which assesses it and sends its recommendations to the relevant local bishop or religious superior or leader who remains the ultimate decision-maker. Therefore, outcomes continue to vary among each Catholic Church authority.

The Complaints Assessment Committee is made up of six volunteers appointed by the New Zealand Catholic Bishops Conference and whose identities are not made public.[429] Neither the Complaint Assessment Committee nor the National Office for Professional Standards hold full information on the final outcomes of claims. The National Office for Professional Standards has recently started collecting some information on final outcomes of reports of sexual abuse, but this information is incomplete. It does not, for example, include the amounts of redress payments made to survivors.[430]

Cooper Legal has acted for many survivors of abuse associated with the Catholic Church. It provided us with examples of investigation practices that it considered were questionable. These include:

- an investigator sought a survivor's criminal records, suggesting a starting point of disbelief
- an investigator inappropriately disclosed information to a survivor's family members for corroboration purposes
- an investigator risked re-traumatising a survivor because their lines of inquiry went beyond what was reasonable, and also because more investigators have become involved and seek further interviews with the survivor
- the Complaints Assessment Committee was supposed to reach a conclusion on "the balance of probabilities", but in reality, it applied a criminal standard of proof, namely "beyond reasonable doubt"
- a copy of an investigator's report was not made available to the survivor.[431]

An investigator's report is a vital document because it is considered by the Complaints Assessment Committee, who then recommend to a bishop or religious superior/leader whether to accept or reject the report of sexual abuse. The majority

of survivors who spoke with us did not receive a draft for them to comment on. Virginia Noonan told us that survivors are given a copy of the investigation report in redacted form if they ask for it.[432] She also said the Church was "very mindful" of Privacy Act considerations.[433] The Act applies to personal information of all individuals referred to in the investigator's report.

The "quest for the truth" principle applied by Te Houhanga Rongo – A Path to Healing feels to some survivors like an investigation into whether the survivor can prove the abuse happened. The search for corroboration of a survivor's account takes great importance. Whether the alleged abuser is alive or dead should not, in itself, affect the weight of the survivor's account. Te Houhanga Rongo – A Path to Healing principles – compassion, respect, fair treatment of all involved, holding the perpetrator to account – appear to hold less sway over the minds of those evaluating a report of sexual abuse.

Not all in the Catholic Church adopt such a starting point. For example, Father Tim Duckworth, New Zealand provincial of Society of Mary, (also known as Marist Fathers), said no-one would come to this process and lie about such a thing as sexual abuse, adding that "within seven seconds of meeting with them, you know that they're not lying … [and you] say to them, 'I believe what you're telling me and I'm sorry about it. You got hurt at a time when you were a lovely, often young person who'd come into our care and we didn't protect you'".[434]

Committee members read the investigator's report and any supporting documents and form their own view about the merits of the report of sexual abuse. Investigators used to indicate whether they considered the report of sexual abuse proven, but that requirement was discontinued in 2020. The Committee decides, by majority view, whether a report of sexual abuse is, on the balance of probabilities, proven. If it upholds a report of sexual abuse, it may recommend a financial payment, although not a specific amount. It may also recommend an apology and counselling. The Catholic Church in Aotearoa New Zealand has not initiated an inquiry into the systemic issues that contribute to abuse or failed responses within the Catholic Church, despite this being part of its terms of reference.[435]

Prior to this inquiry, the dioceses and religious institutes did not centrally hold information about abuse that has been reported to Catholic Church authorities or the records of decision-making about any redress.[436] In response to this inquiry, this information is now being centrally collated by Te Rōpū Tautoko, a group coordinating Catholic Church engagement with this inquiry, on behalf of the Catholic Church entities. Whether this information will form the basis of a national database in response to ongoing and future reports of abuse made it the church is not known.

It has never set up a national database to hold reports about abuse that have been reported to the various dioceses and religious institutes.

The National Office for Professional Standards has not yet carried out an annual audit of the Committee's work, as it is required to do, to ensure consistency of approach and adherence to the principles of Te Houhanga Rongo – A Path to Healing.[437] As a result, there is no information about whether the church's system that is responsible for the national response of Catholic Church authorities to reports of sexual abuse is working as intended. There is some indication that feedback has been recently sought from those people who report sexual abuse, about what is working, or not, from their perspective and involving them in the design or reform of the response process. However there has been no systemic process to engage survivors in the design or reform of the response process. There has not been any systematic attempt to seek feedback from those people who report sexual abuse about what is working, or not, from their perspective or involve them in the design or reform of the response process.

Whakataunga whakamutunga - Final decision

In the context of the church process, the relevant bishop or religious superior/leader has decision-making power in the outcomes for those people who report abuse by their clergy or religious members. The redress outcomes vary significantly amongst Catholic Church authorities. The committee sends a letter to the relevant bishop or religious superior with a summary of the investigation and its recommendation.[438] The individual, whether bishop or religious superior/leader, making the final decision about the report of sexual abuse does not appear to have the level of detail available to the Committee. For example, Cardinal Dew said he received a letter with a summary of what the Complaints Assessment Committee has decided and recommends.[439] There is no criteria or guidance about how to reach this decision, beyond what is contained in Te Houhanga Rongo – A Path to Healing. There are no records kept on the reasons for decisions and no resulting cumulative knowledge bank.

Cardinal Dew said that in about half of the cases he would seek legal advice on the amount of financial compensation to offer.[440] In the other cases, he would decide on his own. He said that the Archdiocese of Wellington offered sums ranging up to $25,000.[441] He characterised such payments as a "pastoral gesture" to "help [survivors] in their recovery, acknowledging that they've been terribly hurt and a few thousand dollars is not going to make a big difference in their life, but in a pastoral way it may help them to move on to do something they've never been able to do, to buy something".[442]

A bishop or religious superior is not required to make a decision within any specified time. Some people who have reported abuse said they experienced delays at this point, although why is not clear.[443] The church has not provided us with information to show how often bishops or religious superiors accept or reject the Committee's recommendation.

Te Houhanga Rongo – A Path to Healing allows a person seeking redress or the respondent to ask for a review of the redress process.[444] The review: "is not an independent evaluation of whether there is substance in any of the grounds for complaint, but whether the procedures of Te Houhanga Rongo – A Path to Healing have been followed. A review of process is not a review of the outcomes reached by the Complaints Assessment Committee or the Church Authority."[445]

Both the person who reported the abuse and alleged perpetrator can ask for a review of the way a decision was reached, that is, whether it followed the procedures set out in Te Houhanga Rongo – A Path to Healing, but they cannot ask for a review of the decision itself.

Kerēme pūtea - Financial claims

A pastoral letter in 1987 said bishops should "do whatever seems reasonable and best to help the victim of any sexual misconduct committed by a priest".[446] Such language suggests generosity, but the reality appears to be otherwise. Many survivors expressed great dissatisfaction with the size of their compensation payment, which they often described as insultingly low in light of the abuse they had suffered. A briefing paper provided by the church based on initial data collected indicated a number of payments had been made over the relevant period, with the average payment being about $30,000, although payments ranged from $1,000 to $152,000.

In 2002, certain church leaders began discussions with their legal advisors about the financial implications of a "flood of complaints" reaching the church.[447] In September of that year, heads and representatives of some of the dioceses and religious institutes met to discuss these financial implications. They agreed that the need to "exercise responsible stewardship over the resources that have come mainly from the Catholic people".[448] The gathering agreed that the church would base its assistance on ACC's assessment criteria.[449] If an individual had already made a claim to ACC, the church would cover any difference between ACC's payments and the actual cost of an approved treatment.[450] If the church made any ex-gratia payments to top up ACC assistance or to help those ineligible for ACC assistance, it would use mediators to determine the size of those payments.[451] Mediators would have regard to the levels or percentages of impairment used by ACC in determining payments.[452]

This sounded like a good approach to calculating payments, but in practise the church was highly inconsistent in the way it determined financial redress and non-financial redress for that matter. In June 2003, the Bishop of Auckland, Pat Dunn, proposed that the church should reach agreement on a maximum payment amount. He noted the Marist Brothers had a maximum of $12,000 and the Society of Mary a maximum of $30,000.[453]

The church also did not appear to have a clear process for determining contributions to survivors' legal costs, nor any focus on supporting survivors during the redress process until the latest version of Te Houhanga Rongo – A Path to Healing (2020) which introduced the provision of therapeutic counselling during this inquiry's process. The church provided non-monetary redress to survivors who requested it. This could take the form of such things as flights and accommodation to attend a restorative justice meeting, or educational support for children and grandchildren. It often denied those who reported abuse from accessing therapeutic support, or provided it only after settlement on a very restricted basis.

Cardinal Dew said the church was caught between wanting to help survivors and having only limited resources, but added that "we do the best we can for them".[454] However, this is not the impression most survivors are left with. As one family member of a survivor explained it, approaching the church felt more like "going up against Goliath", given that "bigger people with more resources" had been up against the Catholic Church and "did not get anywhere".[455]

Ngā tūkinotanga ka noho i waho atu i Te Houhanga Rongo – A Path to Healing
Abuse that falls outside Te Houhanga Rongo – A Path to Healing

The church has no nationally co-ordinated process for responding to claims of sexual abuse by those who are not clergy or members of religious institutes, such as lay members or volunteers. Nor does it have a nationally co-ordinated process for responding to reports of physical, emotional, psychological or reports of neglect. Church entities have thought about this in the past.

Each diocese or religious institutes has its own way of responding to reports of non-sexual abuse. Some have a written process, while others have none.[456] Sister Susan France from the Sisters of Mercy told us that her religious institute followed no specific process, but simply applied a "pastoral approach" to resolving reports of non-sexual abuse.[457] It decided whether to undertake investigations on a case-by-case basis. They are investigated to the extent considered appropriate in the circumstances.[458] The complaints received by the church vary and there is no "one size fits all".[459]

Where a survivor has been abused by more than one Catholic Church authority, different policies and processes may apply to abuse that is outside the scope of Te Houhanga Rongo – A Path to Healing. The legal structures of the various independent Catholic Church entities in Aotearoa New Zealand potentially creates a barrier for survivors, especially those harmed in multiple institutions. The absence of a single response process for all types of abuse, along with a single point of entry into that one process – creates real difficulties for survivors. It unnecessarily complicates the task facing a survivor looking to navigate the systems and also does not structure the process around the survivor's needs.

Bishops and religious superiors also decide whether to accept or reject reports about non-sexual abuse (and sexual abuse by lay members and volunteers). They do not systematically collect or share information about the outcomes of these reports of abuse, so the church is not in a position to fully assess whether decisions are consistent, equitable or satisfy complainants' needs. Nor can the church always determine whether systemic issues are at work behind the individual reports of non-sexual abuse or sexual abuse by lay persons, including volunteers. Having this information helps it revise or introduce policies and practices to safeguard against further abuse. We could find only very limited evidence to suggest survivors had any input into the development the response and redress processes, that these processes were accessible to disabled people, or that there was any accommodation of individual cultural needs of the people who disclosed their experience of abuse to the Catholic Church.

Hātepe whakatika i te āhua ki ngā tangata hāhi me te hunga whakapono ka tūkino tangata
Disciplinary processes in response to clergy and religious who are abusers

We have seen that there have historically been structural issues in the Catholic Church, with bishops and religious superiors removing abusers from their positions and transferring them to other locations where they continue to abuse, rather than starting formal or informal disciplinary processes.

There has always been a distinction in canon law for dealing with sexual abuse by ordained clergy such as bishops, priests and deacons, and non-ordained members of religious institutes, being religious brothers and sisters.[460] It can be more difficult to dismiss ordained men, as removing them from the clerical state involves the sacrament of Holy Orders.[461]

Disciplinary processes have changed over time. Important changes were introduced by the 1983 Code of Canon Law; the Motu Proprio issued by Pope John Paul II in 2001 (and its revision in 2010), and the Motu Proprio issued by Pope Francis in 2019.[462]

Pirihi - Priests

Since 2001, in cases involving an ordained cleric abusing a child, the Ordinary (usually the bishop) must report the abuse to the Holy See advising what he has done about it and seeking approval for a trial or an extra-judicial process.[463]

Local bishops only have the power to limit a priest's ministry, but not remove him from the priesthood.[464] This power to limit includes cancelling a license or practicing certificate, or imposing a restriction. A bishop can also ask a religious superior/leader to remove a member of a religious institute from the diocese. These actions can be taken independently of the Holy See (pope). Any limitation imposed on a priest is only temporary and means that a priest still retains their status. Removal from the clerical state (making a priest no longer a priest) is imposed as a punishment or it may be granted at the priest's own request. Removal from the clerical state for sexual abuse of a minor can only be imposed by the Holy See. A Catholic priest may voluntarily request to be removed from the clerical state. However, only the pope can grant a priest a dispensation from celibacy which is an obligation for clerics.[465]

Often, priests have been encouraged to seek voluntary laicisation (reduced to lay status), as the disciplinary processes enacted by the Holy See are lengthy and complex.

Hunga whakapono kāore anō kia whakawahia, engari e whai ana i ētahi o ngā tikanga a te Hāhi
Non-ordained religious

Religious superiors can restrict the ministry of religious brothers or sisters but need to seek a dismissal or dispensation from vows from the major superiors, who are accountable to the pope. Crimes of sexual abuse by religious must also be reported to the local Ordinary, usually the bishop.[466]

Some Church entities keep priests, brothers, and sisters who are abusers as members of their diocese or religious institute, as they consider that they can be better supervised through a safeguarding plan and therefore this reduces the potential for further harm. Other Church entities have a different approach.[467]

Hātepe whakatika a ngā pīhopa ka tūkino tangata me te mana motuhake o te popa
Disciplinary processes of bishops who are abusers and the exclusive power of the pope

The position is even more limited with bishops, as only the pope can impose restrictions on a bishop's ministry.[468] In a disciplinary sense, bishops are answerable only to the pope and real accountability demanded of bishops depends solely on the pope.[469] The difficulties arising from this were demonstrated recently in the case of Charles Drennan, former bishop of the Diocese of Palmerston North.

On 7 May 2019, Pope Francis issued the Motu Proprio 'Vos Estis Lux Mundi', which requires the metropolitan to report allegations of abuse by bishops and their equivalents to the Holy See.[470] Under Vos Estis Lux Mundi the metropolitan (currently for Aotearoa New Zealand Cardinal Dew, as Archbishop of Wellington) is responsible for the conduct of an investigation in relation to a report of abuse against a bishop of their province. While the metropolitan can ask for the help of "qualified persons" in conducting the investigation, the ultimate responsibility for the investigation remains with the metropolitan.[471]

Cardinal John Dew, as Archbishop of Wellington and metropolitan, had to implement Vos Estis Lux Mundi shortly after it was issued, in response to a report of abuse of a young woman that had been made against Bishop Charles Drennan.[472] It may be the first time Vos Estis Lux Mundi was used anywhere in the world to respond to a report of abuse against a bishop.[473] In September 2019 Charles Drennan wrote a letter of resignation to Pope Francis in respect of his position as Bishop of Palmerston North.[474] The resignation was formally announced on 4 October 2019.

It was not until nearly a year later, on 25 September 2020, that the Holy See advised Cardinal Dew of its decision on conditions to impose on Bishop Drennan's future.[475] The Holy See decided to stop Charles Drennan taking part in any public ministry, and to place restrictions on him in relation to his living arrangements (which had to be outside the diocese of Palmerston North), travel, religious clothing and participation in events as a bishop.[476]

Despite Charles Drennan's resignation as bishop of Palmerston North, at the time of this report he remains a bishop in the Catholic Church. Cardinal Dew told the inquiry in his evidence "I really don't know why he is still a bishop".[477] The Diocese of Palmerston North is responsible for meeting the costs of Charles Drennan's living expenses and rents a house from the Diocese of Auckland, for him to live in.[478] An important consideration is the ongoing monitoring and supervision of Charles Drennan's compliance with these restrictions. Cardinal Dew told the inquiry that he was informed "very categorically" by Cardinal Filoni, who was the then prefect

of the relevant congregation of the Holy See, that Cardinal Filoni had responsibility for Charles Drennan through the Apostolic Nuncio in Aotearoa New Zealand.[479] It is difficult to understand how Church officials from the Holy See in Rome can monitor restrictions imposed on a bishop living in Aotearoa New Zealand. Real concerns arise about the safety of others when only the Holy See can make certain decisions.

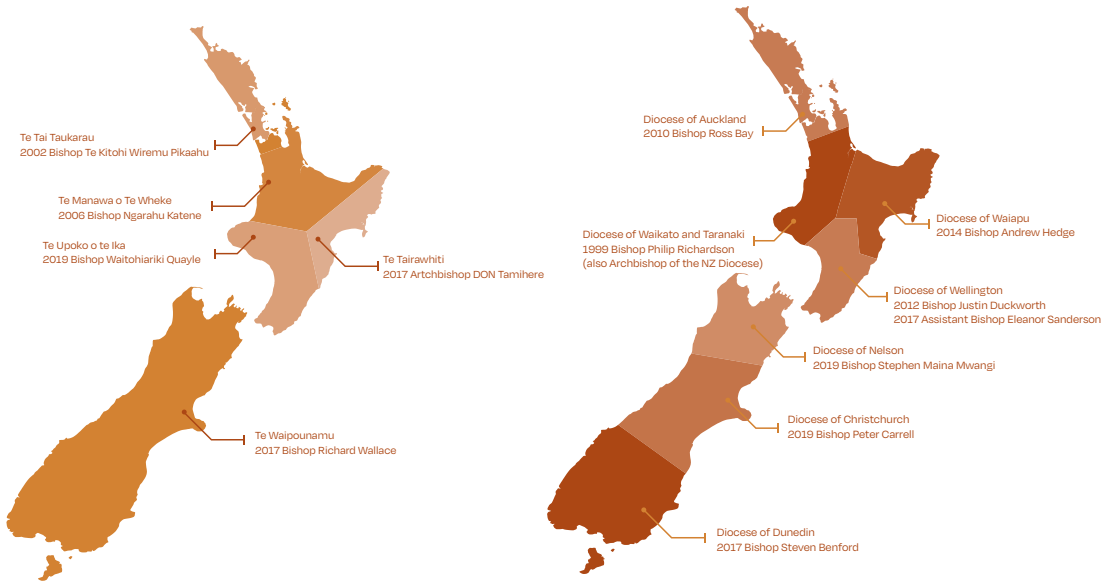
The significant delays in this process raise important questions about the efficiency and effectiveness of the Holy See maintaining the ultimate authority over the future ministry of bishops and the disciplinary process for priests who are subject to reports of abuse.

Hāhi Mihingare - Anglican Church

The Anglican Church is an autonomous branch of the worldwide Anglican Communion and is split into the "core" church and its affiliated entities.[480] Since 1992, the Anglican Church in Aotearoa New Zealand and Polynesia has been constitutionally divided into three Tikanga: Tikanga Māori, Tikanga Pasifika and Tikanga Pākehā. Three Archbishops, one from each of Tikanga Māori, Tikanga Pākehā and Tikanga Pasifika form the "Primacy" of the Anglican Church, or in other words, lead the church.

The geographical division of Tikanga Pākehā diocese and Tikanga Māori amorangi can be seen in the following maps:[481]

Diagram Five: Geographical divisions of the Anglican Church



Each diocese or amorangi then comprises of ministry units, parishes, schools, chaplaincies and co-operating ventures. The church is estimated to have at least 300

parishes and more than 30 schools associated with the Church. The church's primary governing body is the General Synod Te Hinota Whānui, which is made up of three houses: bishops, clergy and laity (non-ordained).

Every decision of the General Synod Te Hinota Whānui must be agreed to by each of the three houses and the three tikanga. The General Synod Te Hinota Whānui only meets for a week at a time, every two years. As a result, the process for change to church processes is slow.[482] The primacy has limited influence to be able to direct change.

Hātepe a te Hāhi Mihingare i mua i te tau 2020
Anglican Church processes prior to 2020

The Anglican Church has had no single point of entry for claims. Rather, the bishop of the relevant diocese investigates and responds to claims individually.

The church has no national policy document to guide bishops' responses to reports of abuse. Instead, bishops have relied on a section of the church's code of canons known as Title D, which sets out the standards of conduct for clergy and others associated with the church. Title D does not provide a redress process for survivors. It sets out a disciplinary process which can lead to an abuser being removed from office.

The church has a number of affiliated entities including social service agencies, education services such as schools and theological colleges, charitable organisations (including residences and previously orphanages and adoption agencies), and pastoral care services, including youth groups. These entities vary from being semi-autonomous to fully autonomous from the church. Some have developed their own claims processes. The role of the church in the claims process of an affiliated entity varies depending on its formal relationship with the church. From some of the evidence we heard, it can also depend on the individual bishop and their desire to be involved in the process.[483]

The church makes a distinction between a complaint and a claim related to abuse. Complaints are addressed under the Title D disciplinary process, which asks questions about whether an alleged abuser is fit to remain in office. A claim, according to Archbishop Philip, is concerned with redress. While the church aimed to be "fulsome" in its redress process "to be frank, the focus on redress has been consequent to us examining the handling of complaints".[484]

Bishop Ross Bay also saw complaints as having a disciplinary focus and claims as being focused on compensation and restitution. He acknowledged that this was a technical distinction, and that survivors disclosing abuse were likely to be seeking redress.[485] Bishop Peter Carrell on the other hand, thought that a complaint involved

disputed facts whereas in a claim the church has accepted the survivor's disclosure, and is working with them on redress.[486] These are very different meanings from senior leaders within the church.

Kāore i whakamana i ngā herenga ki te Māori me ngā uri o Te Moana-nui-a-Kiwa i roto i ngā whanaketanga o ngā kaupapa here puretumu
Failure to honour commitments to Māori and Pacific peoples in development of redress policies

We have seen no evidence of Māori or Pacific people being involved in the development of the church's responses to abuse in care.

In 2018, Tikanga Pākehā circulated a policy document, Addressing Abuse in Church Care.[487] Church leaders told us that Tikanga Pākehā did not consult with the other two Tikanga branches before releasing the document. The document contained some references to tikanga Māori principles, but these were removed from a revised version in 2019.[488] Church leaders explained that this was due to the failure to consult. It had decided to remove the values until further discussions had been held among all branches of church.[489]

This reflects broader issues with the church's structure. Although the three branches appear to be equal, the reality is that Tikanga Pākehā controls the bulk of resources.[490] The unequal distribution of assets has potential implications for the ability of Tikanga Māori to respond to reports of abuse.

The church also acknowledged that it had not made information about redress processes available in reo Māori or any languages other than English.[491]

Kāore i tino pono - Lack of transparency

Church leaders have acknowledged that processes have not been accessible, and that the church was not taking steps to proactively seek out survivors, or to reach survivors from marginalised communities.[492]

At the time of publication, the church's website provided basic information about reporting abuse but, it did not inform survivors about the process, the support they might receive, or the range of possible outcomes including financial compensation, apology, and counselling.

Some dioceses have used posters listing helpline numbers and naming contact people, but these posters have been limited in number and prominence, only in English, and lacking information about the redress process.[493] Even when survivors made contact with the church, they were not given any written information or guidelines about the process that would be followed.

Bishop Bay acknowledged that the church had a responsibility to seek out and care for survivors and was not doing so effectively.[494] Bishop Carrell acknowledged that there could be a connection between the lack of information about redress and low numbers of survivors coming forward. The failure to have nationally accessible and transparent policies across survivors, and access to funding for legal or other appropriate advice, seems stark when compared to church assets of at least $2,872,000,000.[495]

Process and policy documents show no consideration of Deaf and disabled people or those with other vulnerabilities.

Tā te hāhi whakahoki ki ngā pārongo tūkino
The church's response to reports of abuse

We have seen no evidence that the church has ever made a formal decision that Title D should be used as a basis for responding to reports of abuse or assessing claims. Nor have we seen any policy to provide guidance for bishops on how to apply the Title D process to redress. Archbishop Philip Richardson told us that Title D's purpose had always been on discipline and fitness to minister, and he regretted that the church's focus had often been on those questions rather than on the needs of the complainant.[496]

This is one of many issues that we have identified, and church leaders have acknowledged, with respect to the church's approach to reports of abuse.

Up to 2020, bishops played a crucial role in the application of Title D. Each bishop is independent, which means that different approaches have been taken in different dioceses or amorangi.

In the past, dioceses have adopted processes and policies relating to claims of sexual harassment, and have established small committees to investigate claims and make findings. These committees have appeared to focus more on discipline than claims processes. So far as we are aware, no diocese has developed a formal claims policy, though one Anglican-affiliated school adopted a policy on historic abuse claims after this inquiry was established.[497]

Overall, diocesan autonomy combined with the lack of national policy has produced processes that are ad hoc and inconsistent. Archbishop Richardson acknowledged that the current structure had a built-in potential for inconsistency, and had "failed" the church and survivors, and that as a result the church had no single cohesive process.[498] Redress, whether monetary or non-monetary, differed from diocese to diocese and from one affiliated entity to another, if it was offered at all. Such inconsistency, he said, was "unfair and unacceptable".[499] He said institutions also

differed in the records they had kept, the financial and human resources at their disposal, and the number of lawyers and other external advisors they sought help from.[500]

Bishops have also felt conflict between their responsibility to survivors and their other duties. Bishops are responsible for licensing clergy within their dioceses, and as part of that role they are obliged to provide support and pastoral care for other clergy. However, until a policy change in 2020, they were also responsible for responding to disclosures of abuse, and for disciplining abusers. Bishops and survivors told us that these obligations conflicted.

At ordination, bishops take an oath to both seek out and care for those in need and provide pastoral care to clergy "Bishops are sent to lead by their example … They are to be Christ's shepherds in seeking out and caring for those in need … They are to heal and reconcile, uphold justice and strive for peace … They are to ordain, send forth and care for the Church's pastors."[501]

Bishop Bay agreed that survivors of abuse are people in need within the words of the ordination and that the church, and Bishops, have a role to seek out and care for survivors.[502] There was little evidence of steps taken by the church to proactively seek out survivors of abuse and care for them.

Bishops have faced a conflict between their duty to provide pastoral care to clergy members and their moral obligation to support survivors.[503] The church's process is neither co-ordinated, consistent nor transparent. Survivor Jacinda Thompson said a bishop should not be simultaneously offering a clergy member pastoral care and making disciplinary decisions about that same person. She said no one would "accept a judge also acting as a support person for the accused" and she recommended splitting the roles.[504] Bishop Ross Bay said "the relationship between bishops and clergy can make it difficult for bishops to make objective and good decisions", but the 2020 changes to Title D went a long way towards removing this tension.[505]

We heard that, rather than pursuing disciplinary action against alleged abusers, bishops have sought reconciliation between abusers and survivors. As part of the Title D process, survivors have been invited to mediation with their abusers. Survivors told us that these processes led to mutual accusations, or "he said, she said" debates that caused survivors further distress and anguish.

Some survivors told us mediation was a bishop's first port of call when faced with a sexual abuse allegation and moved to other avenues only when mediation failed. We saw Nelson diocese policies on general standards of behaviour from 2006 that showed mediation was a strongly promoted option, even in indecent exposure and indecent assault cases.[506]

Some in the Church, including professionals such as Yvonne Pauling, said they considered it inappropriate for dealing with reports of sexual abuse as it relied on the survivor and the accused meeting with each other to work through the abuse allegations, which survivors found traumatising. It was also unclear why mediation was being used to deal with such sensitive subject matter "the experience of relying on mediation, or having it as an option, in the complaints process has been confusing and unsatisfactory".[507]

We heard that bishops have sometimes bypassed the Title D process altogether and encouraged those accused of abuse to resign. Archbishop Richardson said it was "disappointing that [resignation] has been at times used as a way of avoiding … responsibility" for a clergy member's actions.[508] He said canon law was clear that this was not an option, and any bishops who acted in this way today would themselves face disciplinary action.[509]

Even when a bishop followed the Title D process through to completion, clergy members who were found guilty of abuse were often insufficiently sanctioned by the church and were not removed from office when they should have been.[510] Archbishop Richardson cited the example of survivor Robert Oakly, who was sexually abused by Archdeacon Bert Jameson in the Nelson area in the 1960s. Jameson was subsequently convicted of offences relating to sexual abuse however, "Jameson wasn't deposed from holy orders and was able to continue to represent himself as a priest of the church" until after his conviction.[511] The Archbishop said: "I simply don't believe that the church did not know [about Jameson's actions]."[512]

The Anglican Church has no national policy on reporting abuse to secular agencies, such as Police and Oranga Tamariki. The Church often failed to report abuse, and in some cases actively discouraged survivors from going to these agencies.[513] Archbishop Philip Richardson acknowledged the experience of one survivor who told us of a "failure of process".[514] He said that she and others should have been supported to go to Police by the Church.[515]

Survivors have told us that the church's haphazard and inconsistent processes did not bring them the healing they sought. Robert Oakly said the process of seeking redress was "almost actually worse than the event itself, and I wonder if [the payment offered] is even worth it".[516] Another survivor, Margaret Wilkinson, said she incurred legal fees of $10,000, which the church refused to contribute to, instead offering her six counselling sessions. She said succinctly: "I felt re-victimised".[517]

Survivors also said that, as part of the process, they were not given information about how much money the church was likely to offer. The church has rarely disclosed

settlement amounts or other outcomes, but it told us payments had averaged about $30,000 and had ranged from $1,000 up to $100,000. The church estimated it had received 579 abuse complaints, of which 161 claims have settled and 27 remain outstanding or are ongoing.[518]There are 394 claims where the status is unknown.[519] The estimates of numbers are based on reports of abuse made to the Church and its affiliated entities, such as schools and care organisations. We have good reason to believe, however, that the number of abuse claims the church received or processed is understated because we know that due to historic intentional and unintentional destruction of records, historical records kept are incomplete.[520]

Bishop Bay acknowledged the church had "failed to alert people to the fact that we could consider, say, financial redress or other [forms of redress]".[521] One anonymous survivor told us she wanted the school to acknowledge it should have given her more support, should have recommended, or helped her get, independent legal advice, should have discussed going to police, and should have helped her get counselling.[522] The church has no policy on funding independent legal advice or representation, a deficiency people inside and outside the church have long recognised and sought to rectify.

He tono kia panonitia - Calls for change

Calls for change stretch back many years. In 1989, the Reverend Patricia Allan wrote a letter to Archbishop Brian Davis pointing out the "urgent need to critically examine the underlying issues surrounding this present crisis [of the abuse in the church]".[523] In 1993, Nerys Parry, a psychologist used by the church in redress claims, wrote to Bishop Bruce Moore complaining about the variation in guidelines employed by each diocese to deal with sexual harassment and recommending bishops agree on a set of national guidelines and draw up a complaints procedure for sexual misconduct.[524]

In 2002, a media article referred to a group of female survivors of abuse by clergy that had been pushing for the establishment of an independent avenue for complaints within the church, such as an ombudsman for church affairs.[525] About a year later, an unknown author or authors drew up draft guidelines on how to respond to sexual abuse by clergy and recommended establishing a special unit to manage claims.[526]

Archbishop Richardson said nothing became of the draft guidelines, and the recommended work had not been carried out.[527] Then in 2016, and again in 2017, Cooper Legal wrote to the church about its lack of a clear process for investigating and responding to complaints.[528]

Despite all these calls, the church continued to persist with the same poor disciplinary process to deal with reports of abuse.

Ngā panonitanga ki te kaupapa here i te tau 2020
Changes to the policy in 2020

Changes to Title D came into force in early 2020, partly in response to some of these concerns. Among other changes, a new two-tier system was introduced, in which breaches of standards could be defined either as misconduct (any intentional, significant or continuing departure from standards, including abuse) or the less serious unsatisfactory conduct.

When a complaint is received, a national registrar determines whether it should be investigated as misconduct or unsatisfactory conduct. Bishops no longer determine claims of misconduct. Instead, these are referred to a Title D Tribunal for determination. The survivor is supported by a church advocate, whereas previously the survivor represented themselves.

Archbishop Richardson told us that these changes had "greatly reduced" the roles of bishops in the church's disciplinary processes.[529] Bishops no longer have active decision-making roles. While they formally have a role because it is Bishops that issue licences and have jurisdiction, they must now follow the recommendations of the Registrar and Tribunals as to outcomes.[530]

Bishop Bay said removing bishops from decision-making would also remove the conflict between their duties to survivors and clergy, by shifting "critical decisions about the process of a complaint to a more objective forum, with processes that will be applied more consistently across the whole Anglican Church".[531]

The Commission is yet to see evidence of the effect of these changes.

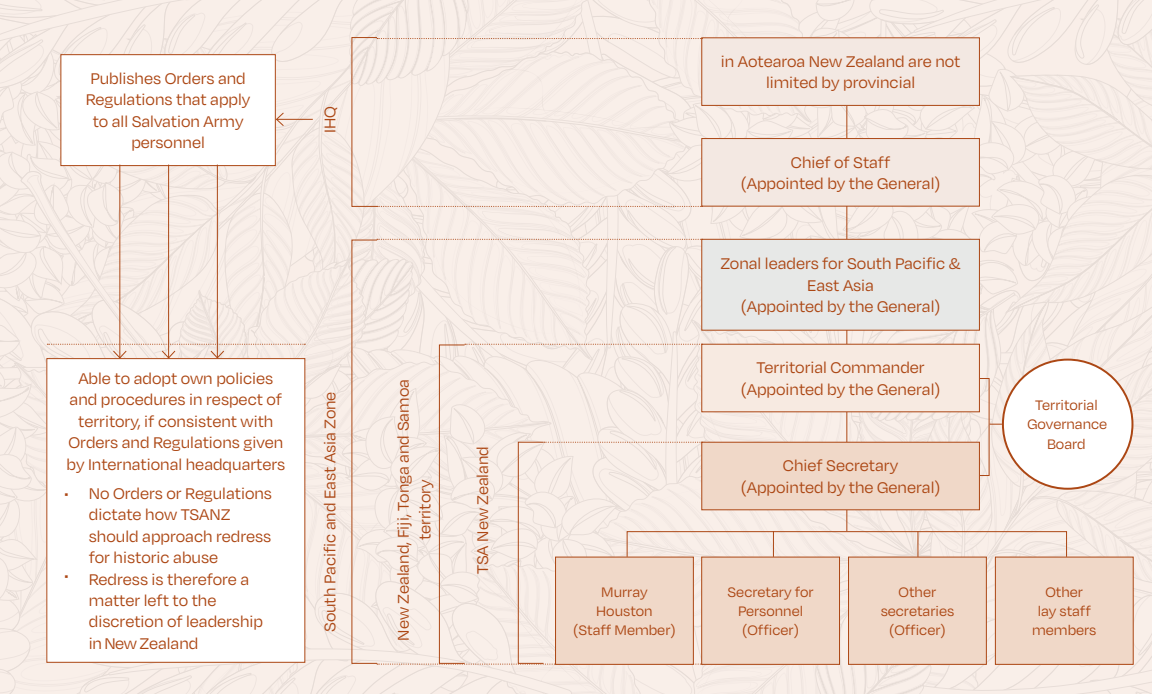
Te Ope Whakaora - The Salvation Army

The Salvation Army has been active in Aotearoa New Zealand since 1883. Internationally, The Salvation Army is divided into five zones. These zones are further divided into territories, which are sub-divided into commands or regions. The Salvation Army in Aotearoa New Zealand falls into the South Pacific and East Asia zone, and is part of the New Zealand, Fiji, Tonga and Samoa Territory.[532]

The Salvation Army has a quasi-military command structure, headed by an elected General who directs The Army operations at International Headquarters located in London. Territorial Commanders and the Territorial Governance Board are responsible for the work of The Salvation Army within their Territories, are subject to the control and direction of International Headquarters, and ultimately report to the General.

The Salvation Army in New Zealand can enact policies and procedures if they are consistent with the orders and regulations given by International Headquarters in the United Kingdom.[533] Those headquarters have issued no orders and regulations about how the New Zealand territory should approach redress, so its leadership here is free to largely act autonomously.[534]

Diagram Six: Overview of structure and functions of The Salvation Army



Religious congregations in The Salvation Army are known as Corps and church members as soldiers. Ordained clergy are known as officers and hold various military ranks. The Army's structure is top-down and strongly hierarchical, and all official positions, apart from the General, are appointed, not elected.

Hātepe kerēme a Te Ope Whakaora - Salvation Army claims process

The Salvation Army has appointed a single individual to make all decisions about claims of abuse in children's homes, where most abuse took place. Murray Houston has overseen the claims process for former residents since 2003. He was The Salvation Army's commercial manager when appointed to this role, but subsequently also filled the role as The Salvation Army's Referral Officer. Mr Houston has broad autonomy and discretion to settle claims and according to The Salvation Army, has the ability to seek input and guidance as required.[535] He follows an established process that has evolved over time, however there are no written policy documents or guidelines.[536] Mr Houston has no training in tikanga Māori or trauma-informed engagement with survivors. Settlements usually involve a financial payment and apology. Sometimes counselling, and other forms of non-monetary redress may be offered as well.

The Salvation Army ran 11 children's homes during the twentieth century, but the last of these closed in 1999. The State placed children in the homes, as did their parents or guardians, voluntarily. We cannot state with total accuracy how many children went through the homes, but Colonel Gerry Walker told us the number was in the thousands.[537] Although we cannot say with accuracy how many Māori children were placed in The Salvation Army's homes, we understand it to be a significant number. Between 2001 and August 2020, The Salvation Army had received 238 claims of abuse in children's homes.

Whakahoki tōmua - Early responses

Reports of abuse were usually made to the local congregation, or corps, and its manager investigated. Between January 2000 and August 2003, The Salvation Army received 10 reports of abuse in care. Janet Lowe was one of those to make a report. She also tried to connect with other survivors from Salvation Army children's homes, and a front-page story in The Evening Post in 2001 highlighted her efforts to get redress.[538]

Early claims were overseen by the church leadership. Within the organisation, there was a general disbelief that abuse could have occurred in The Salvation Army's children's homes.[539] The Salvation Army took a legalistic approach to early claims, which were dealt with by its insurer, which used a law firm and Queen's Counsel to help with this work. Legal defences were relied on. The law firm wrote to Janet Lowe, for example, to say it doubted her claim would be successful, adding that it "could be defeated on a number of fronts", including by the limitation defence.[540]

The Salvation Army had no formal policies or procedures in place to deal with these early claims. Its lawyers largely guided interactions with survivors, and claims were dealt with in an ad hoc manner.[541]

That changed after a documentary about abuse in Australian Salvation Army homes aired in 2003, prompting survivors in Aotearoa New Zealand homes to come forward. By September of that year, 45 survivors had lodged claims, and the church began to realise the abuse was more prevalent and serious than originally thought, and that a different approach was needed.[542]

Then Territorial Commander, Commissioner Shaw Clifton, appointed Murray Houston to deal with the claims. He worked with The Salvation Army's leadership, insurer and lawyers to assess and respond to claims. However, tensions soon surfaced between the insurer and lawyers, who preferred the existing legalistic approach, and The Salvation Army's leadership team, who preferred a more empathetic, survivor-

focused approach.[543] Mr Houston eventually became the sole point of contact for survivors who bought claims. He has personally dealt with every complainant since. At the time of his appointment, Mr Houston had no background, training or experience in dealing with claims of this nature. He has not subsequently received any training.

Over time, correspondence with survivors became less legalistic. There were still references to the limitation defence (something that could be found in correspondence to survivors right up till 2014), but these were outnumbered by references to The Salvation Army's stated preference not to deal with claims on a strict legal basis.[544]

Hātepe o te wā - Current process

The claims process has remained relatively unchanged since 2003. However The Salvation Army provided evidence that its process has evolved over time as its understanding of the impact of abuse has changed.[545] The Salvation Army has never conducted any formal review of how its process works and whether it could be improved. Mr Houston retains primary responsibility for all children's home claims. The Secretary for Personnel handles abuse claims involving soldiers and officers in all other settings.

All children's homes claims, whether from a survivor or their lawyer, are directed to Mr Houston. They are often accompanied by a request for records. Mr Houston said he tried to respond to these requests before organising a face-to-face meeting. He told us that in-person interviews were a crucial part of the claims process because they allowed for a more empathetic approach towards the survivor, and also helped him verify the claim.[546] A Salvation Army officer occasionally accompanied him to these meetings, and until 2011 would always wear their uniform. This was discontinued when it became clear the mere sight of a Salvation Army uniform could be disconcerting, even traumatic, for some survivors.[547]

The Salvation Army accepted that as long as it was still able to hear the experiences of the survivor, a face-to-face interview may not be as part of their claims redress process, as it can be unnecessarily traumatising. The Salvation Army acknowledged that more flexibility is required in this area: while a face-to-face interview is welcomed by some survivors, others may find it difficult.[548]

After the interview, Mr Houston told us that he verified that the survivor and alleged perpetrator were at the home at the time alleged. Mr Houston gave evidence that The Salvation Army's approach was to "largely accept the allegations at face value, but to

seek to verify and corroborate what was said".[549] In the early years, he sought advice from The Salvation Army's insurer or lawyers, but since then he had come to his own conclusions about the accuracy.[550]

Mr Houston then provided the survivor with a formal response. This usually included an apology and a settlement offer. Some negotiation over the settlement amount may follow and, if it was accepted, the offer is documented and a discharge is signed. Mr Houston said he now settles most claims within two to three months, although 12 per cent of the overall redress claims settled with The Salvation Army took longer than 18 months to settle. According to The Salvation Army, claims that took longer tended to be claims made in the early period of the claims process being adopted. The Salvation Army told us that delays occurred for any numbers of additional reasons, including that the survivor did not feel ready to go through the process, had lost touch with their lawyer or The Salvation Army, or had not come back to continue the process until a later date. The Salvation Army has never insisted survivors keep the terms of their settlement confidential.

As at 1 August 2020, The Salvation Army had settled 166 of the 238 children's homes claims it had received.[551] Ten claims had been declined, there was 'no further action' on 60 of the claims, and there were two claims outstanding.[552] Since then, Mr Houston has reviewed several of the claims that were first declined, and four have since been settled.[553]

The Salvation Army does not actively monitor Mr Houston's workload or supervise his work on redress matters. The Salvation Army gave evidence that they provided "whatever resource [Mr Houston] has needed to undertake this very challenging work".[554] Mr Houston also provides high-level reporting on some matters, such as estimated annual payment amounts.[555] The Salvation Army has not provided training in tikanga Māori or how to deal with survivors of abuse – a significant defect given so much responsibility rests on his shoulders.[556] Cooper Legal has raised concerns about Mr Houston's workload with The Salvation Army on a number of occasions.[557] Mr Houston told us that he did not have concerns about his workload.[558]

Some survivors told us that The Salvation Army's redress process can lack empathy. Some said they found the face-to-face interviews difficult, and one survivor met Mr Houston at a McDonalds to receive his settlement offer.[559]

The Salvation Army had no documented process for dealing with abuse claims.[560] Prior to our faith-based redress hearing in March 2021, it had not published any information about its claims process on its website. The information currently on the website is under a tab called 'Royal Commission' and is difficult to locate.[561]

Mr Houston has a high degree of discretion over the outcome of claims and is under no restrictions on the size of payments he can offer. He told us he did not use any matrix or criteria to help determine monetary payments, but that he considers a number of factors, including individual circumstances of the survivor (including nature and severity of abuse), legal considerations and parity between survivors. Mr Houston also said he was guided by the recommendations of lawyers acting for the survivor.[562] He also used his experience to arrive at a settlement amount.[563]

The average payment over the past 17 years was about $29,000, although payments ranged from $5,000 to $91,000.[564] During that period, The Salvation Army had paid about $5 million to survivors.[565] This figure included lump sum payments and contributions to counselling, legal fees and other services.[566]

The Salvation Army said it regularly offered counselling to survivors, but the overall amount spent on counselling was relatively low.[567] It did not offer a fixed sum for counselling, but rather an amount that varied according to each survivor's circumstances. The Salvation Army has no written protocol on how survivors can get independent legal advice. It encourages those without a lawyer to seek legal advice before signing a settlement agreement.[568] Mr Houston told us he accepted that, had this approach been in place in earlier years, it would have made a significant difference to those who settled and did not receive a contribution.[569]

The Salvation Army has provided some survivors with support other than money or counselling, including targeted payments toward things such as hearing aids, travel for whānau, tattoo removal and a laptop, as well as providing support for a survivor to get a flat and furniture on release from prison. It has also assisted some survivors' attendance at Salvation Army programmes, including the prison reintegration service. In questioning, Mr Houston recalled two instances of referrals being made to the prison reintegration service.[570] While The Salvation Army also has available non-monetary supports, this has generally been provided at the request of survivors, rather than being proactively offered by The Salvation Army. Some survivors may have been unaware of this option.[571]

In spite of The Salvation Army's role in providing social and welfare services, it has made little attempt to utilise this expertise and resource to provide this sort of wrap around support that some survivors badly need.[572] Its dealings with survivors have been kept separate from the very services they could have benefitted from. The Salvation Army has committed to do better in this regard.[573]

Mr Houston said apologies were an essential component of any redress package, although he acknowledged that early attempts at apologies were inadequate.[574] He said today's apologies were more empathetic and less legalistic. Some survivors have

reported being pleased with their apologies,[575] although some survivors have still criticised the apologies they received as insufficient.

The Salvation Army does not have a policy on dealing with claims brought by the whānau of a deceased person, or by individuals who died before their claim was settled.[576] Mr Houston said he considered such claims on a case-by-case basis. He said it was difficult to assess claims brought on behalf of deceased individuals using the existing process.[577]

Where allegations were of possible criminal conduct, Mr Houston gave evidence that The Salvation Army encouraged the survivor to contact Police and report the allegations.[578] The Salvation Army would cooperate fully with Police if a complaint was made, but The Salvation Army would not approach Police without the survivor's consent. While we heard evidence of The Salvation Army's cooperation with Police, we also heard that Mr N was not proactively offered support to make a criminal complaint.[579]

Mr Houston did not collect data about whether survivors had any disability.[580] While Mr Houston would tailor the process to survivor needs if he was asked by the survivor, he would not proactively seek to do this. Mr Houston has not had any training in working with disabled people.

The Salvation Army has not taken a proactive approach to finding survivors of abuse.[581] There has been a limited number of Pacific claimants that have gone through the redress process. When asked whether The Salvation Army would proactively seek out survivors to inform them about the process, Colonel Walker stated that they had translated "a considerable amount of our information in different languages", and that engaging appropriately and clearly with people of different cultures is a "journey" that The Salvation Army is on.[582] Murray Houston said that The Salvation Army would look at any opportunity for accommodating persons with disability to come forward but has not proactively sought out disabled survivors.[583] Colonel Walker said that he expects The Salvation Army's redress process to enable supported and informed decision making for disabled survivors going forwards.[584] It is unclear whether The Salvation Army intends to make information available in New Zealand sign language or easy read formats.[585]

Kāore i whakamana i ngā herenga ki ngā purapura ora Māori
Failure to honour commitment to Māori survivors

Colonel Gerry Walker stated that The Salvation Army is "very conscious of our responsibilities and obligations under the Treaty of Waitangi".[586] As early as 1997, The Salvation Army had a Treaty of Waitangi policy that recognised the importance of bicultural partnership.[587] Despite having policies on te Tiriti, The Salvation Army failed

to incorporate them into its redress process in a meaningful and comprehensive way.[588] The Salvation Army did not proactively incorporate tikanga Māori or te ao Māori values into its redress process.

Murray Houston said he had not received any training on tikanga Māori and accepted that such training "would have been helpful" in fulfilling his role.[589] Mr Houston did not collect data about survivors' ethnicity. He did not incorporate tikanga Māori into his assessment process, unless specifically requested by the survivor, and generally did not tailor the process to survivors' different cultural needs – although he tried to support survivors with different needs, and from different backgrounds, as best he could. In one instance, Mr Houston received a claim where a survivor spoke to a loss of cultural identity. Mr Houston brought a Māori cadet with him to the meeting, which was well received by the survivor.[590]

He hātepe kerēme nō ētahi atu wāhi whakapono
Other faith-based institutions' claims processes

We obtained information from 11 other faith-based institutions about their claims processes. They are: Assemblies of God, Baptist Church, Gloriavale Christian Community, Lutheran Church, Methodist Church, Association of Jehovah's Witnesses, Plymouth Brethren Christian Church, Presbyterian Church, Reformed Church, Seventh Day Adventists and The Church of Jesus Christ of Latter-Day Saints.

We found that some had well-developed claims processes and others had none. Many institutions, at least initially, had no formal claims process and no overall policy to guide complaints about abuse in care. They responded to reports of abuses on an ad-hoc basis, which resulted in considerable variation in responses. Some would employ an independent lawyer to look into reports of abuse, and others would investigate themselves. In some cases, institutions undertook no internal investigation, depriving survivors of the ability to obtain any redress at all. Financial compensation ranged from $5,000 to $60,000. The Methodist Church offered the highest levels of compensation.

Some did not offer apologies. Those offering apologies did so in writing or in person. In one case, an institution declined to offer an unconditional apology, instead apologising "if the offending did occur". These institutions did not routinely offer counselling. Few offered any form of non-monetary redress.

In some cases, they made group settlements. Presbyterian Support Central appointed a senior independent lawyer to investigate claims of abuse at Berhampore Children's Home in Wellington. The lawyer didn't believe any of the survivors, and nothing came of their claims. Later, in February 2007, Presbyterian Support Central reversed its position and offered the nine survivors $25,000 each and a meeting with the

Presbyterian Support Central board.[591] It also agreed to install a memorial at the site of the residence and hold a ceremony there.

Sometimes institutions used confidentiality clauses to prevent survivors from speaking out about the settlement or speaking critically about the institution that had harmed them. The inclusion of confidentiality clauses in settlement agreements has become less common in recent times, but such clauses can still be found.

Information provided to us by institutions shows they sometimes viewed survivors in a harsh light. Survivors have at times been described as only after the money, potential reputational risks and others have been discouraged from seeking financial compensation at all.

Whakarāpopototanga me ngā kitenga
Summary of findings

Hāhi Katorika - Catholic Church

Ngā ārai whakatakotoranga - Structural barriers

- Survivors face numerous barriers when disclosing abuse to the Catholic Church, made worse by the very structure of the Church. The Catholic Church has not taken sufficient steps to reduce these barriers for survivors.
- There have been failures by bishops and religious superiors to use procedures under canon law, or to use them properly. In addition, only the Holy See can permanently remove a priest or bishop from ministry, but responses from the Holy See are often delayed. This suggests the rights of alleged abusers being prioritised over survivor needs and over the prevention of further abuse.

Whakahoki onamata - Historical response

- The Church was aware of allegations of abuse, and actions were taken on a case-by-case basis. However, there were only very limited attempts at a unified, national approach for responding to such allegations prior to the early 1990s.

Ngā hātepe o te wā - Current processes

- Te Houhanga Rongo – A Path to Healing was first introduced in 1998 and remains limited to reports of sexual abuse by clergy and religious. Not all religious institutes have accepted the role of National Office of Professional Standards and the Complaints Assessment Committee.
- The Catholic Church still does not have a consistent approach to addressing reports of abuse that do not include sexual abuse by the clergy and religious.
- One of the four principles of Te Houhanga Rongo – A Path to Healing is fairness and natural justice. The principle states that "in any inquiry the quest for truth will be paramount and will be based on the principles of natural justice." In practice, the "quest for the truth" translates into an investigative response dominated by the search for corroboration of a survivor's account in the context of most abuse occurring in secrecy.[592]

- More emphasis is placed on investigation rather than treating the survivor with empathy and compassion. Survivors' interests are not paramount in the Catholic Church's redress policy or in its redress process generally.
- Catholic institutions frequently fail to provide appropriate care and support for survivors during redress processes or criminal proceedings.
- Prior to the inquiry, the Catholic church had generally not attempted to collect or analyse information about reports of abuse, including about the prevalence of abuse. Poor record-keeping, a culture of secrecy and an apparent lack of interest or inclination to understand the nature and extent of abuse has meant the church leaders had limited insight into systemic issues impacting the safety of those in its care.

Motuhaketanga - Independence

- In the context of church processes, despite the existence of the National Office of Professional Standards and the Complaints Assessment Committee, bishops and leaders of religious institutes still have authority over redress outcomes following an investigation process. Dioceses and religious institutes still have entirely autonomous power and authority over redress outcomes following an investigation process.
- Individuals seeking redress have no way to appeal against the decision of the Complaints Assessment Committee. They are limited to a review of process under Te Houhanga Rongo – A Path to Healing.[593]

Whai wāhitanga - Accessibility

- While the Catholic Church has a significant Pacific community, there has been no incorporation of Pacific peoples' worldviews into any redress processes.
- The Catholic Church has incorporated limited measures to increase accessibility of reporting and redress process for Deaf and disabled survivors.
- The Catholic Church has generally not proactively sought out those who were abused in the care of the Church.

Te whakamahinga o te Tiriti - Application of te Tiriti

- The Catholic Church has policies that emphasise its commitment to biculturalism, but it does not sufficiently involve Māori in designing, implementing or reforming its redress process, or incorporate tikanga Māori or te ao Māori values into its redress process.

Haepapatanga - Accountability

- Leaders of Catholic Church authorities did not prioritise their duty to assess and minimise risk of further offending when responding to reports of abuse. We consider that they deemed redress processes and responses to survivors as separate to safeguarding responses. This ignores a key motivation of survivors to come forward which is to prevent further abuse.

Hāhi Mihingare - Anglican Church

Ngā ārai whakatakotoranga - Structural barriers

- The Anglican Church's governing body, the General Synod, has failed to implement to a national redress process despite internal calls for change.
- Regional dioceses and amorangi have adopted different processes, policies, and outcomes, when dealing with redress (if at all). These processes, policies, and outcomes have tended to be opaque, not written down or publicly available, and dependent on the particular bishop of an area.
- Prior to 2020, some bishops intentionally encouraged clergy who were abusers to resign rather than be disciplined, have taken different approaches to record keeping, including intentional record destruction, and have failed or refused to share information about abuse to other parts of the church.[594]

Ētahi ārai hei tūhura - Barriers to disclosure

- Survivors face numerous barriers when disclosing abuse to the Anglican Church. The Anglican Church has failed to take sufficient steps to understand or mitigate these barriers for survivors.
- The Anglican Church has very rarely taken proactive steps to seek out survivors of abuse in their care.

Ngā hātepe o te wā me ngā hātepe e whakaarotia ana
Current and proposed processes

- There is no current redress process, in written form, only an amended professional disciplinary process (Title D) which is inadequate for dealing with redress.
- The church inconsistently distinguishes between complaints and claims which confuses survivors and church leadership and can act as a barrier to redress.
- There is an ongoing focus on mediation as a means of resolving abuse claims, despite evidence that it is not appropriate for redress.
- The new Title D process is legalistic, focuses on the fitness of the abuser to minister, provides inadequate support and outcomes for survivors, and uses terminology that is not accessible or well defined.
- Draft claims processes (both former and current) still have one person (either Bishop or Registrar) as the gatekeeper to resolution of claims and complaints despite evidence that a single gatekeeper can be a barrier to disclosure.

Te whakamahinga o te Tiriti - Application of te Tiriti

- Most processes and policy documents in place for handling reports of abuse do not use reo Māori or include references to tikanga Māori or te Tiriti. This is despite the church's strong commitments in its Constitution to te Tiriti and working in partnership with the Tikanga Māori branch of the church.
- Some ministry units within the seven Tikanga Pākehā dioceses, do not understand the church's constitutional commitments to te Tiriti, or have failed to work in partnership with the Tikanga Māori branch of the church, and as a result have lacked cultural capability.

Whai wāhitanga - Accessibility

- Despite the three Tikanga model, and its stated ideal of cultural equality, the previous and current process and policy documents in place for handling abuse show no real consideration of any other cultures, particularly Māori and Pacific peoples, Deaf or disabled persons, or people with other vulnerabilities. Nor do communications around the complaints process.

Taunekeneketanga me ngā purapura ora - Interactions with survivors

- The Anglican Church has systemically failed to provide adequate communications about processes for reporting abuse and for seeking redress.
- With a lack of national action by the General Synod, and in the face of long standing inadequate and inconsistent regional approaches, it has often been left to survivors to drive redress outcomes and seek change.
- Survivors who were members of the Anglican Church, and their supporters, often felt ostracised from their church community after disclosing abuse and advocating for change.

Te Ope Whakaora - The Salvation Army

Whakahoki onamata - Historical response

- The Salvation Army did not have specific processes in place to deal with early complaints or allegations of abuse between the 1950s and 1970s. It had broader policies and processes in place to deal with complaints against officers, but there were several instances where these policies and processes were ineffective.

Ngā hātepe o te wā - Current processes

- The Salvation Army claims process does not incorporate pastoral or spiritual rehabilitation or healing elements, unless expressly requested by a claimant, and operates in a 'silo' isolated from expert social services available within the overall organisation.
- While The Salvation Army is responsive to specific survivor redress requests, survivors often remain unaware that they can make these requests, even if other forms of redress would contribute to their healing.
- Many survivors feel unheard or disbelieved, even if The Salvation Army upholds their complaint.
- Its claims process is too reliant on the expertise and experience of a single individual, and its effectiveness would be seriously diminished if a replacement were not trained up in time to take over from him.
- Although The Salvation Army's claims process has been in operation for 18 years, The Salvation Army has never conducted a formal review of how it works and how the process could be improved.

Motuhaketanga - Independence

- Its claims process is not independent and consequently some survivors felt it was not impartial or objective.
- The Salvation Army has no formal mechanism for independent review to deal with complaints about its claims process, and no means of appeal for those dissatisfied with the process and outcome.

Te whakamahinga o te Tiriti - Application of te Tiriti

- The Salvation Army has policies that emphasise its commitment to biculturalism, but it does not involve Māori in designing its claims process or incorporate tikanga Māori or te ao Māori values into its claims process.

Whai wāhitanga - Accessibility

- Until 2021, The Salvation Army's claims process was not set down in writing or made publicly available, and so was neither transparent nor accessible. This was a barrier to survivors accessing their redress process. The information available now remains limited.
- The Salvation Army has not made information on redress available in formats accessible to Deaf and disabled survivors, such as New Zealand Sign Language and easy-read formats.
- The Salvation Army has not taken steps to proactively seek out survivors who were abused in their care.

2.5: Ngā wheako o ngā purapura ora e pā ana ki ngā hātepe puretumu a te Karauna me ngā whakapono Survivors' experiences of State and faith redress processes

Whakatakinga - Introduction

Many survivors expressed deep dissatisfaction at the way State agencies and faith-based institutions dealt with their redress claims. Experiences varied, but in many cases, survivors found organisations to be self-interested, culturally insensitive, bureaucratic, legalistic, or all-powerful, providing a limited form of redress on a take-it-or-leave-it basis. They were given little information about a redress process but asked to provide information about themselves and all the intimate details of their abuse, sometimes repeatedly. Many were made to wait years for decisions and kept in the dark while they waited. Many survivors had to face processes with only limited whānau support, due to damaged family relationships.

Survivors felt that State and faith-based organisations profoundly misunderstood the abuse they had experienced, and how deeply that abuse had altered the course of their lives. The redress offered through State and faith-based processes provided little support for them to recover or rebuild their lives or restore their mana and oranga, or wellbeing. Little if anything was offered in the way of support with housing, or employment and the provision of counselling has generally been limited to the period after the investigation process and for a limited time. Rather, survivors were offered payments that many saw as inadequate, and apologies that many regarded as meaningless. Most accepted these offers because they felt they had no other option.

Māori survivors who sought redress experienced no recognition of their mana or the mana of Māori in decision-making; there was no support to connect and reconnect with whānau, whakapapa and culture, or to rediscover lost values. For them, the processes reflected Pākehā values. Pacific people, Deaf and disabled people faced their own additional hurdles, too. In this section, survivors describe their difficulties in seeking redress – difficulties that were largely the same in State and faith-based redress processes.

Me uaua ka kite i te mata Māori me ngā uara tikanga
Māori faces and tikanga values nowhere to be seen

Some Māori survivors told us the redress processes, designed and run by Pākehā, contained nothing reflecting their own values. Some felt listened to and cared for when making claims, but many found the processes unhelpful and inconsistent with holistic concepts of oranga because the processes did not encourage or support them to connect and reconnect with whakapapa and whānau. Nor did they recognise harm to their whānau, hapū, iwi and identity, and did not try to restore mana or observe or even acknowledge tikanga Māori.

Most never saw a single Māori face during their interactions with the agencies or institutions and encountered limited tikanga Māori or reo Māori in their processes. Georgina Sammons said the first and only time someone recognised or even expressed anything in reo Māori was when she met one of the inquiry's commissioners for a one-on-one meeting.[595]

Loretta Ryder also complained about the absence of any Māori staff or any appreciation of the value of dealing with people kanohi ki te kanohi, face-to-face.

> *"From the beginning, there were no Māori people involved. I had to call up the contact centre and I wasn't that comfortable speaking to a Pākehā person … When I talk to someone, I want to see their face. I need to do that to know who I am dealing with and to be able to feel their āhua."*[596]

Many Māori survivors said Pākehā claims assessors lacked the cultural knowledge to evaluate Māori needs. Paora Sweeney said that "Māori people should work with Māori people. Not to say that Pākehā people shouldn't be involved, but Māori people need to be involved in the process."[597] Māori survivors, like so many others, found little information available about what they could claim for, or how to claim for it, or what culturally-specific support services were available, especially as many engaged with the processes without the help of a lawyer. Some chose to have nothing to do with the redress processes. One survivor, Gwyneth Beard, said she did not "think there is anything there that can be given to me. It would just bring back the trauma".[598]

Neta Kerepeti said she was never given the option of a Māori counsellor. She found the Pākehā counsellor she was sent to ineffectual, and left feeling as though she was being treated for a bad back. "I ended up going back to see my kuia in Kaikōura. This was far more effective than any other service I've been to."[599] She said reconnecting with her whānau had proved the most effective way to restore her life. She also realised after receiving a compensation payment that "no amount of money was ever going to give my life back".[600] Time on her marae talking about her experiences and learning about her whakapapa helped enormously. In her view, redress processes

should offer therapeutic and restorative practices designed and provided by Māori in accordance with Māori values. She said there were many ways to heal trauma, such as going with "someone who works in rongoā [Māori healing systems] or who takes you on a haerenga [journey] into the bush where you can learn about rongoā and breathe some different air".[601]

No survivor we heard from described encountering Māori values in any claims process such as te mana tāngata, whanaungatanga, and manaakitanga. None mentioned any action taken to restore the wrong and achieve a state of balance and peace. And none mentioned any recognition of the tūkino, or abuse, harm and trauma experienced by the survivors' whānau, hapū, iwi, and hapori, or community, the impact on these communities when a child was removed and harmed, or these communities' need for healing and restoration. Nor do claims processes seek to restore the collective mana of communities that have been affected.

Many Māori survivors wanted more wholesale change to the way the Crown and faith-based institutions approached redress, one that was consistent with te Tiriti and led by Māori. Said Loretta Ryder: "We need a system that is by Māori, for Māori, not a Pākehā system with a Māori name."602

Neta Kerepeti said a major shift would be necessary "if we want a system that is not racist and if we want a system that acknowledges tāngata whenua and all its citizens and if we want a system that not only talks about the Treaty in principle but applies the principles of that Treaty".[603] Maryann Rangi said the best chance of real change lay with the next generation.

> *"We can't change the past or fix what has already happened. I don't want to waste my energy on adults. I want to focus on children. I think looking after things like kohanga reo is a good place to start."*[604]

Finally, redress processes have generally provided little or no support for Māori survivors to connect or reconnect with whānau, hapū, iwi and their hapori or community, nor did they help survivors' whānau, who also frequently suffered from this dislocation. Terry King said he felt his culture and identity had been stolen from him, and he would have benefitted greatly if a process had been able to help him reconnect with his whakapapa.

> *"I am not able to say where my whānau was from and I carry this lack of connection and knowing today. I would like to be supported to find information on my Māori whakapapa and then to connect with my lost whānau. I think there should be a body or organisation to assist with this. I would like to know where I am from and where I stand."*[605]

I tōhipatia te ahurea o ngā purapura ora nō Te Moana-nui-a-Kiwa Pacific survivors' culture overlooked

Most Pacific survivors also described cultural obstacles to full and proper redress for the harm done to them. They said both State and faith-based redress processes reflected Palagi outlooks and values and were insensitive to the needs of Pacific cultures. Many of the obstacles to reporting abuse including strong respect for authority and church leaders, power imbalances, fear of not being believed, the imperative not to disrupt the vā among and between families also applied to seeking redress. Traditional hierarchies related to age, status and gender influence who can safely speak about sex and sexual abuse, as well as who is likely to be supported by their family. People who spoke out risked bringing fakamā or shame on their families, and risk isolation from family, church and community relationships.

> *"When you pull away from [the Church], you pull away from so much of the cultural stuff, so much of the support village stuff. It's almost like being ostracised from your whānau. Because of what's happened, we don't do any of those events any more. There are also events that we do not get invited to anymore."*[606]

These risks can outweigh a survivor's motivation to seek redress. Survivors said exercising sensitivity to these cultural considerations would have gone a long way towards improving the claims process – and might well have encouraged other Pacific survivors to come forward. But they said there was no such cultural sensitivity because both State and faith-based processes were steeped in Palagi values.

David Crichton said everyone he dealt with at the Ministry of Social Development was Palagi and unable to appreciate what it felt like to be "lied to about your cultural identity and the existence of your extended family".[607]

Many Pacific survivors said redress processes were insensitive to the needs of Pacific cultures, felt unsafe, and lacked transparency and accountability.

Fa'amoana Luafutu described his first interview with Ministry of Social Development as deeply disconcerting. He said he was asked his name at the outset and replied Fa'amoana, to which the woman from the ministry responded: "Okay John, and who have you brought with you today?"[608] He said he repeated that his name was Fa'amoana, yet continued to be addressed as John. Eventually he said he was asked what name he would prefer and he answered: "I don't care, I don't care what you call me, whatever's easier."[609]

Pacific survivors said they found redress processes complex, difficult to understand and drawn-out. They also said processes seemed designed to protect the reputation of the organisation rather than provide redress that would help them rebuild their lives. Frances Tagaloa, who engaged in a redress process with the Catholic Church, said she was left in the dark about the redress process until a settlement letter arrived.[610] She had no input into the process, no support or legal advice, and no influence over whether her abuser was held to account. Ms CU, who also engaged with the Catholic Church, said that her background education and experience helped her understand the complaints process. Without these advantages, she said, she would have been "scared and afraid" about going through the processes, and would have found it very confusing.[611]

The use of standardised, rather than culturally informed, processes was particularly difficult for Pacific survivors who, throughout their time in care, had been cut off from their cultures, languages and identities. They said they should have had input into the form of the apology and the venue for its delivery, which, as a matter of course, should have been a public place. Hake Halo said it would have meant a lot to him if "someone very high up in the government genuinely apologise[d] to me and [sought] my forgiveness. Even though [Prime Minister] Helen Clark apologised, it was to everybody. I should have got a personal apology that was addressed to me".[612]

E kore te nuinga o te hunga Turi me te hunga hauā e whiwhi puretumu
Redress unobtainable for most Deaf and disabled people

Survivors with physical or learning disability face additional hurdles to getting redress, whether as a result of communication difficulties, a lack of support or a lack of awareness about what abuse was or that redress was available. Several disabled survivors said that for a long time they had not even known that neglect, violence and other forms of harm counted as abuse. Others had not known what redress was or what treatment qualified for redress. Deaf survivor Jarrod Burrell said he had "never heard of redress. No one has ever explained what redress is, let alone that it as an option for survivors of abuse like me".[613] He also said he was unaware of any information about redress in New Zealand Sign Language or any attempt to promote such information.[614]

Many disabled survivors who are aware of redress processes might find it difficult to know how to make a claim, according to survivor and disability rights activist, Sir Robert Martin.[615] One survivor with autism explained that pursuing a claim with the Ministry of Health was completely unattainable for them:

> *"Here's a systemic issue. I actually can't. Like this is, I literally, I would find it too difficult."*[616]

In addition to the challenges faced by all survivors, disabled survivors also felt that redress processes were not created in consultation with disabled people, or even with disabled people in mind. Some couldn't get hold of or understand information about their time in care. Most, including those who still rely on disability support services, lacked the necessary autonomy, support and safeguards required to make decisions about getting redress. Survivors said the advocacy or help necessary to overcome these barriers was generally unavailable. New Zealand Sign Language interpreters were in very short supply, as were legal and other services with the skills and training required to work effectively with disabled survivors.

Reokore ana ngā purapura ora i te āhua ki ngā hātepe puretumu
Survivors feel without a voice in way redress processes work

Survivors consistently said redress processes would produce better outcomes for them if they contributed to their design. They told us that these processes seemed currently focused on minimising organisations' legal liability, not on meeting survivors' needs. Māori, Pacific and disabled survivors particularly stressed this point. Some Māori survivors said they should be able to exercise their tino rangatiratanga in relation to the design and functioning of redress processes. Neta Kerepeti said "government agencies should have trust in Māori and let our people take the lead and have tino rangatiratanga or involvement in decision-making".[617] Disabled survivor Matthew Whiting emphasised that that any redress process "must be co-designed with disabled people", and must comply with the United Nations Convention on the Rights of Persons with Disabilities.[618]

Survivors feel that the development of redress processes have been largely one-sided and that their perspectives have been ignored.

> *"if you're not around the table, you're on the menu".*[619]

Helen Boynton told us what survivors needed should matter most, "not what government policy says we need or should get".[620] Ms CU said the Catholic Church should "release power so that any reconciliation is co-designed independently with the victim's families".[621] She said the redress process should not be led by the church because it would try to control it.[622]

Kāpō ana ngā purapura ora i te āhua ki te iti o ngā whakamōhiohiotanga me ngā whakapānga
Survivors feel left in the dark by inadequate information and contact

The lack of publicly available information about all aspects of redress processes leaves many survivors confused about whether they can make a claim, how they can

claim, how their claim will be assessed, and what they might receive at the end of it all. Some were not even told the most basic fact when they first reported abuse: that a claims process was available for them to seek compensation for the harm done to them. Survivors also said they were not given updates while they waited for their claims to be assessed and decisions to be made. Given the lack of information and communication, it is no surprise survivors often became suspicious of the organisations they were dealing with.

No faith-based institution or State agency, (with the exception of the Ministry of Social Development and Catholic Church), publishes more than basic information on how to make a claim, and as many survivors told us, this made a confusing process even more difficult to understand. James Packer, who is Deaf and has Asperger's syndrome, settled a claim with the Ministry of Education in 2018, before the Ministry improved its systems. He said the lack of publicly available information made it "so hard to understand, to know what was required, and what outcomes were possible in redress. We knew nothing about eligibility of claims, how they were being assessed and by whom, or what sort of compensation was available. There have been so many delays and no clarity around timeframes".[623] Ann-Marie Shelley, who was abused at a Salvation Army home for unmarried mothers, said she had no idea The Salvation Army had a redress process until she watched the faith-based redress hearing.[624] No State agency or faith-based institution publishes information in accessible forms, such as easy read versions, or forms suitable for blind survivors.

Survivors found even verbally communicated information was not good enough. One survivor, Ms T, said no-one at the Ministry of Social Development explained the historic claims process to her.[625] She said two ministry staff met her but "they were absolutely hopeless and seemed to have no idea".[626] Another anonymous survivor was made an offer by the ministry through its fast-track process, but even when she received her settlement she "didn't really understand what 'fast-track' meant".[627]

Many survivors found the lack of contact throughout the assessment stage of a claims process emotionally draining, especially the silence about the progress of their claim and how long they might have to wait for a decision. Mark Goold said more contact from the Ministry of Social Development would have made a difference to him because he would "actually know what is happening with [my] claim, as opposed to feeling like a number".[628] He said he waited three years without any contact from the ministry, and then out of the blue was invited to a meeting where he was offered an apology and compensation. He said the speed with which it all happened "made me suspicious because I hadn't heard anything for three years, then the next minute they want to pay me out and get rid of me. I felt I was being railroaded and that [the ministry] were just trying to cover their own backsides".[629]

One survivor said the Ministry of Social Development gave her no clue about how it arrived at its settlement offer.

> *"I am not sure why I got the payment or what it was for. Was it for the sexual assaults? Or all the times I had been held to the ground? I do not know. No explanation came with it to say what I was being compensated for."*[630]

Jacinda Thompson said the Anglican Church had no publicly available guidelines on financial compensation, making it impossible for her and others to determine how the church arrived at settlement offers.[631] This was a common experience: months or years of silence, then a settlement offer containing no information about how the financial compensation figure was calculated, or even which abuse it related to. It was difficult in these circumstances for survivors to know if an offer was fair.

Survivors have said they are unhappy with the way State agencies and faith-based institutions fail to hand over copies of investigation reports or provide only heavily redacted versions, fail to explain how they determine compensation offers, and refuse to say who makes decisions about redress offers.

The result of this lack of information, and of any attempt by institutions to actively spread the word about redress, is that many survivors remain unaware of their options, especially those accessing community-based care and those still in mental health facilities and long-term residential care.[632]

Hēmanawa nui, manaakitanga iti
Lack of manaakitanga through stressful process

Most survivors found it an emotional, even traumatic, experience to make a claim for redress because of the painful memories and feelings of disempowerment it brought back. Some described feeling suicidal during and after the redress process. Very few said they received adequate support through this challenging experience. For them, redress processes seemed designed almost to add to the strain they were under as they were asked again and again, often in an intrusive way by investigators and assessors, to describe the abuse they suffered.

More generally, survivors felt the institutions lacked any genuine concern for them or interest in finding out what might help them repair their lives. Rather, the institutions' sole concern was reaching a settlement and putting the matter behind them. Jacinda Thompson said the Anglican Church offered her no counselling, and eventually she asked for it herself, by which time, she learned, the church had already provided counselling for her abuser.[633] Joan Bellingham said she never received any support from the Ministry of Health throughout her claim, and she "constantly felt like I was

battling uphill to get people to recognise me or believe what I was saying actually happened".[634] Robert Oakly said the Anglican Church's initial response to his contact "didn't accept responsibility for me and there was no further offer of support other than to pray for me. I'm a non-believer because of what they've done, so praying is not going to do anything".[635] Kathleen O'Connor said the Ministry of Social Development provided no support, and made no contact with her, during the claims process. She said six months passed and she heard nothing, which she said made her "really angry because when I first had the interview, I did feel like I was being heard and treated like a person [but] now I feel like I am just another number on the files".[636]

Some survivors of abuse while in Salvation Army care wanted support to continue after receiving their settlement, but this did not happen. One survivor, Mr N, said he found the whole process "a bit clinical". At the time he made his statement to the inquiry, he had had no contact from The Salvation Army since receiving a payment.[637] Another, Mr L, said he, too, never heard from The Salvation Army after the redress process was over and it felt like "their attitude was, 'eh, we've done our bit, we've dealt with this fella'".[638]

If redress processes did provide support, it was usually limited to counselling. Some survivors found counselling an effective way to help with trauma. Not all survivors wanted counselling, especially if it was offered through a Pākehā or Palagi lens. Hone Tipene said he "will not engage with counsellors because they have nothing they can connect with me on".[639]

Some Māori survivors wanted support to connect or reconnect with whānau and heal in ways that reflected their cultural values. Neta Kerepeti spoke of the therapeutic value of spending time with relatives on her marae. In her view, a wider range of therapeutic services should be eligible for funding.[640]

Me uaua ka whiwhi kōkiritanga, āwhinatanga ā-pūtea hoki
Advocacy and financial help hit and miss

Survivors' experiences of legal assistance and advocacy varied. Some had dedicated legal help from lawyers well versed in abuse in care cases. Others struggled to find lawyers with experience, and as a result occasionally ended up accepting unnecessarily small settlements. Some were offered help with the cost of legal advice, others not. Some chose to seek legal aid, while others were deterred by the prospect of the debt they would be left with. Still others relied on family members and counsellors to help them get and interpret records and lodge claims. All of this placed pressure on claimants' time, energy and resources. Institutions, meanwhile, had plenty of all three. Faith-based institutions were inconsistent about contributing to legal costs.

Some survivors said they were encouraged to get independent legal advice, while others said they were not. Those who did get advice sometimes didn't fully understand the meaning of agreements they signed. One survivor said she was so angry when she received her settlement offer from the Ministry of Social Development that she did not read the agreement closely and didn't see a lawyer about what the offer meant. "I don't remember [the ministry] telling me that I should see a lawyer."[641]

Mrs N, who was sexually abused at an Anglican school, said she didn't have a lawyer and wasn't offered legal advice. She asked to have her counsellor as her support person, but the church would not pay the cost and so she ended up with a church-nominated person – an outcome she found damaging.[642]

Deaf and disabled survivors often rely on advocacy services when navigating redress processes. Some face extra difficulties in finding a lawyer who is familiar with issues facing disabled people. Current processes do not provide the access to advocacy services required to enable disabled survivors to have control and choice as they navigate redress processes, and to ensure equitable outcomes for disabled survivors. James Packer, who is Deaf and has Asperger's syndrome, said an advocate might have assisted him at the outset of his claim with the Ministry of Education. He said he knew nothing about how to make a claim and could not go to any designated organisation or person for support.[643]

No institution routinely offered survivors financial advice about what to do with their settlement money, something that would have been highly useful for some survivors who had struggled to manage money well for most of their lives. Mark Goold said he was not offered any financial advice, but simply asked for his bank account number.[644] Kathleen O'Connor also said she received no offer of financial advice, but felt strongly that organisations such as ACC and the Ministry of Social Development should offer budgeting advice to people who received payments.[645] The Ministry of Social Development and Oranga Tamariki said they put claimants in touch with financial advisory services on a case-by-case basis. The other agencies and faith-based institutions said they did not offer financial advice with their settlement payments.

Kāore he motuhaketanga, he arotake motuhake rānei
Lack of independence or independent review

Many survivors said they did not trust the organisations they went to for redress to treat them fairly because those same organisations were responsible for the abuse they had suffered. This applied even if the organisation no longer existed, but its responsibilities and liabilities were transferred to a new organisation. Many said

they simply could not accept that these organisations could be impartial or manage the conflicts of interest well. Instead, they viewed redress processes as designed to defend organisations' reputation and interests – and sometimes to defend the abuser. James Packer said it was "impossible for claimants to truly feel the process is fair and impartial".[646]

Many survivors said they did not want to have anything to do with the institution in which they were abused but, without any independent way for redress, other than the courts, they had no choice. Frances Tagaloa said she found it "strange to me that I had to go back to the Marist Brothers, to the very organisation that allowed the abuse to happen ... to try and see if they would fix it".[647] Keith Wiffin said the lack of independence completely undermined the integrity of the claims process. He said the Ministry of Social Development had a "very high threshold" to prove claims, and its starting point was to be "suspicious and disbelieving" of claimants and "protective of its own staff, even those with criminal convictions for abusing children".[648]

Mary Marshall, who suffers from depression since her abuse as a child and teenager, said there was a "clear bias and an unwillingness by Catholics to believe a Catholic nun could ever engage in such heinous crimes".[649]

Wiremu Waikari told us he found "the redress process to be a bit like a slap in the face. It's like being retraumatised. MSD locked us up back then and now they want to shut the book on what all the workers that were hired by them did to us. There's no transparency because MSD are assessing themselves. To me, MSD having that level of power is not on".[650]

Cooper Legal, speaking for the many claimants it had represented over the years, said there could be no real accountability while agencies "placed themselves in the position of information provider, information assessor, Judge, actuary and service provider".[651]

Survivors said they found the absence of any independent review or appeal mechanisms unfair because it left them with two unpalatable choices: either take the offer as presented or take the claim to court. As Phillipa Wilson discovered, the Ministry of Social Development will consider reviewing an offer internally – but at a cost. She said the ministry told her it would have to go through the claim "with a fine-tooth comb" and this "would probably take another four years at least and there was a chance the settlement offer would decrease".[652]

Survivors said the ministry was unwilling to review settlements after they had agreed to them, even when new information had come to light about the abuse or abuser. They said this was unfair. One survivor participated in the ministry's fast-track process, and said it was only fair that claims settled in this way should be open to review.[653]

Hēmanawa ana i te āhua ki ngā haepapatanga
Frustration at lack of accountability

Many survivors told us redress was not just about themselves. Holding perpetrators and organisations to account was a crucial part of moving on with their lives. Yet they said they saw little of that accountability. Rather, they saw dismissive attitudes and a refusal to investigate and take responsibility for acts of abuse, let alone seek to prevent any repeat of this abuse.

One survivor said financial compensation was of secondary importance to accountability, and that for some, justice mattered most. Chassy Duncan said he had done so much to heal and change himself and now realised the final piece of the jigsaw would be for the Ministry of Social Development and Ministry of Education to "finally take responsibility for what they did to me".[654]

Survivors said agencies and institutions dodged responsibility and instead disbelieved them, pressured them to justify their claims, minimised the harm done to them, tried to shift the blame elsewhere, and sometimes tried to protect – or even support – the abusers. Mary Marshall said the Catholic Church rejected her claim of sexual abuse by a nun on grounds no one else had ever reported abuse by the nun, and that other nuns held her in high regard. She felt the church was, in effect, saying she was lying, and she felt suicidal afterwards.[655] Kerry Johnson said the Ministry of Education and Ministry of Social Development pointed the blame at one another rather than owning up to the abuse he suffered at Campbell Park school in Otago. He wished the agencies would "stop arguing about who's to blame" so he could put everything in the past.[656]

Some survivors found that even clear evidence of abuse was not enough to make agencies take responsibility. Phillipa Wilson noted that her records contained evidence of negligence by the Ministry of Social Development, but the ministry only accepted several of her allegations: "I'm still not satisfied with what [the ministry] have accepted and what they haven't."[657] She said there was "no denying it" and the ministry needed to take responsibility.[658] Many survivors said the lack of accountability felt like a double standard. One survivor said there needed to be a "true and honest" acknowledgement of mistakes.[659] He said he had been held accountable for his mistakes and gone to jail, so "if I'm being held accountable, the State should be, too".[660]

Survivors Marc and John said churches were more interested in protecting their reputations than confronting the harm done to children and young people.[661] Survivor Ms K said she felt the Catholic Church hid behind the law to protect itself.[662] An anonymous witness made the same observation, saying St Margaret's College, an Anglican boarding school, "always [went] into damage control for themselves, at any

cost",[663] while William Wilson said the Methodist Church's Wesley College "tried to hide anything that would make the school look bad".[664]

Survivors told us that, at times, faith-based institutions used "deny and defend" strategies, the exceptions being when the media or other organisations became involved. Jacinda Thompson said the Anglican Church "behave[d] differently in public than behind closed doors, and survivors are treated better when the church's actions can be seen by all".[665] She said that when the media reported the church's arguments in defence of her claim, it "had a change of heart … and had a renewed interest in settling".[666]

Survivors said some faith-based institutions had demanded settlement agreements where the survivor was not allowed to talk about the abuse or the circumstances leading up to the settlement. One anonymous survivor who engaged in a redress process with a Catholic Church authority told the inquiry that he found this particularly harsh because he said that he was told any breach of confidentiality would mean he would have to repay everything plus additional costs.[667] While this was at first common practice, church entities removed confidentiality clauses from their agreements and took the position that they were not to be enforced.[668]

Perpetrators had sometimes died by the time survivors disclosed abuse and made a claim, but survivors said they still wanted acknowledgement and accountability from the institution concerned.

The lack of acknowledgement of harm and meaningful, proportionate consequences for abusers was particularly frustrating for Māori survivors because this was a vital part of utua kia ea, or restoration and balance, as well as being consistent with tikanga Māori practices. One survivor said his settlement offer confirmed individual managers and staff would not be taking personal ownership for the repeated abuse he had endured.[669]

Some survivors we heard from said faith-based institutions were unwilling to investigate and hold their own to account. Instead, there is some evidence that these institutions at times supported alleged abusers (including by funding legal costs), encouraged them to quietly resign, moved them to other locations where the offending could resume, or supported them to live in relative comfort long after their offending had been revealed. Meanwhile, at times these same institutions did not always support survivors during the claims process.

One witness, Ms CU, said the Catholic Church funded a QC as a lawyer for a priest accused – and subsequently convicted – of indecent communication with her niece.[670]

In another example Magnus Murray, a priest convicted in 2003 on 10 charges of sexual offending against Dunedin schoolboys, was not dismissed as a priest until 16 years later, and then only after a public backlash. At the time he was dismissed, Magnus Murray was living in a rest home and continuing to use the title Father. One of his victims, Robert Donaldson, said it was a disgrace and an insult that it took so long for the Catholic Church to dismiss Murray.[671]

Louise Deans said she was stonewalled by the Anglican Church after alleging sexual harassment by the priest Robert McCullough in the late 1980s.[672] The church funded legal support and counselling for McCullough and dismissed her claim without proper investigation. McCullough was eventually removed from his positions and his resignation was accepted in relation to his teaching roles, but he remained a priest.[673]

Another survivor, Ms C, described the Anglican Church as a misogynistic "old boys' club" that protected perpetrators within its ranks.[674] Anne Hill said the Catholic Church removed the priest Michael Shirres from his positions after she disclosed his abuse of her, but he remained a member of the Dominican Order.[675] Ms Hill asked the church to seek out other potential victims of Michael Shirres,[676] and publicly repeated this request in July 2018 when she told the New Zealand Herald and The Northern Advocate about her abuse. In August 2018, in response to contact from WelCom, the newspaper of the Archdiocese of Wellington's and the Diocese of Palmerston and following on from the interest in media reports about Shirres, the Dominican Provincial published an article encouraging any other victims of Michael Shirres to come forward.[677] Despite this, Ms Hill told us she felt that the church had minimised his offending.[678] Years after his death, a church publication published an article praising his contribution to Māori spirituality.[679] Ms Hill said there was no possibility of change unless the church put the needs of survivors ahead of the protection of priests.[680]

Keith Wiffin said the Crown defended Alan Moncreif-Wright throughout court action and the out-of-court redress process even after he had been convicted of sexual offending against children. He said the Crown had just one agenda, to limit at every step any legal liability, even if that meant denying meaningful compensation to victims.[681] He said he found the Crown's position "totally unjustifiable [and] it gobsmacks me to this day".[682] James Packer said a teacher at Kelston School for the Deaf in Auckland subjected him and other boys to repeated physical assaults, and on one occasion broke a boy's arm. The teacher was sent on a "refresher course" but continued to teach – and to traumatise – his students.[683]

Survivors took deep offence at the way faith-based institutions continued to defend and praise abusers long after the institution was aware of abuse – including after they had died. One survivor, Mr F, said he read an obituary describing his abuser, a

Catholic priest, as "a man of profound integrity and a faithful priest".[684] In 2003, Father Tom Laffey admitted to sexually abusing a child in the mid-1960s. The Network of Survivors of Abuse in Faith-based Institutions said that at Father Laffey's funeral in 2019, then Provincial David Kennerley told those gathered that they should "imitate the faithful spirit" Father Laffey had shown.[685] The Network said this action was evidence that the culture of abuse in the Catholic Church had not changed.[686]

Te korenga i whakarite āraitanga, i panoni pūnaha hoki
Failure to take preventive action and make system change

Many survivors reported abuse with the expectation that institutions or State agencies would take action to prevent other children or young people from being similarly abused. This can be achieved by addressing the danger of known individual perpetrators and by making changes to abusive systems. Survivors saw such preventive steps as an integral part of full and proper redress. Māori survivors, in particular, continue to see the presence of the State in the lives of their whānau, and remain concerned about the risk of harm to those currently in care.

Some disabled survivors also continue to have a troubled relationship with the State and State authorities. For example, we have heard that even when the large psychopaedic institutions shut down, many residents with learning disability were transferred to other full-time care settings. There is concern that abuse may still continue in those settings today. Many disabled and Deaf people continue to have to navigate government-operated disability support services which may be run by the same District Health Boards or government department that was responsible for their historic abuse and may be responsible for abuse they still experience today.

> *"We need to learn how to stop the damage before it happens … We must change the way we think about support and the way we provide support as a country or nothing will change. In another twenty years' time, we will be having the same Commission."*[687]

Survivors identified very few instances in which institutions had taken preventive action of any sort in response to their reports of abuse or claims for redress. Quite the opposite. They found that churches and schools left perpetrators in positions where they could continue to abuse.

Ms C said the Anglican Church continued to protect and support the vicar who abused her, and knew he had gone on to abuse other children. She said she was "horrified" at the lack of responsibility by church leaders, given their undoubted awareness that one of their own was a sexual offender.[688] One anonymous survivor said the Catholic Church moved child-sex abusers around the country and overseas in a blatant act of self-interest and ahead of "the interests, wellbeing and security of

our children, our communities and the laws of our land".[689] Tamzin Ford said the man who sexually assaulted her was ordained a priest three years later by the Wellington Anglican Diocese. She felt "disgusted and worried" for other girls he would come into contact with, and also felt let down that "so many people knew about what he had done but still thought it was okay to make him a priest".[690]

Survivors often felt that if their abuser had been dealt with appropriately at the time, the abuse of other children would have been prevented. One survivor, Mr F, who was abused while in the care of the Marist Fathers (and whose son was abused by a Marist brother), felt he received no assurance that the church would take steps to prevent other children from being abused.[691] He said he had "found no evidence of action or commitment from the church to prevent it happening to others, which I had hoped for when I reported the abuse to the church".[692]

Nā takaroa ko hēmanawa - Long delays a cause of frustration

A persistent theme among survivors was the length of time it took some government agencies and faith-based institutions to make a decision about their claim. Survivors could wait a year or more just to receive records of their time in care, followed by several more years before an investigation got under way or was completed.

Toni Jarvis waited 17 years to receive his settlement offer,[693] and others waited for more than a decade. Wiremu Waikari described his 12-year wait as unreasonable,[694] while Kerry Johnson said he had been waiting 15 years and his claim was still not settled. He said it seemed to him "the Government just wants to sweep this all under the carpet".[695]

The Ministry of Social Development said the average length of time to process a claim was four years, a performance it acknowledged was not good enough.[696] The Ministry of Education said claims typically took more than two years to process,[697] and in fact had only processed 46 claims in a 10 year period.

Survivors said the deadlines agencies gave them often shifted. Kathleen O'Connor said the Ministry of Social Development would push out the date every time she made contact, which made her angry because "they were constantly putting the buck on someone else. There was always a reason: they were snowed under, they had a backlog, they didn't have enough staff".[698] Phillipa Wilson had the same experience with the ministry. She was initially told her claim would take about eight months, then 18 months because it was short of staff, then eventually three to four years.[699]

Delays are also less common but also present with some faith-based organisations. Ms K said she asked the Catholic Church for help before the criminal trials of the two former Marist Brothers who had abused her and received a reply a year later.[700]

Mary Marshall's claim for redress left her shattered because it continually triggered memories of her abuse and the physical terror that accompanied it.[701]

The long delays left many survivors at the end of their tethers and under pressure to accept an offer simply to put an end to the delays and move on with their lives. Chassy Duncan, who made a claim in 2014 and received an offer six years later, said he accepted it so he could put the claims process behind him. He knew the offer wasn't as good as it could be, but after a lot of thought took it anyway.[702]

He whakapāha manakore - Apologies not meaningful

Some survivors said they received sincere apologies, but far more said they did not. Apologies were not sincere, did not genuinely acknowledge the abuse, and did not come from sufficiently senior individuals within the organisation. Survivors wanted an apology that was specific to their circumstances and culturally appropriate, not a generic one with a few adjustments. They also wanted genuine expressions of remorse and acceptance of responsibility for the harm done. Some, as discussed earlier, wanted apologies delivered in forms and at locations that were meaningful to them.

Many survivors said apology letters lacked personal details and appeared to be adaptations of template documents. One survivor said she was so angry with her letter of apology she threw it in the fire.

> *"You could tell it was a generic letter. It didn't have any personal details, it just apologised for my experience. I felt like another statistic. How many of those letters did they send out? How many photocopies of those letters did they make?"*[703]

Another survivor said he doubted "the guy who signs the apology letters even looks at them".[704] Kevin England said his apology was a standard form letter that lacked any accountability and he read it just once.[705] Chassy Duncan said his apology was cold and detached and felt like it had been "copied … from a Google template … it didn't carry any weight".[706] Roy Takiaho said his apology "was a piece of paper [with] a bit of writing on it … that meant nothing to me".[707]

Survivors were more likely to find apology letters meaningful if they had input into the wording. Gloria White told us the Salvation Army amended its letter at her request, which left her feeling supported and listened to.[708] But other survivors said they had no opportunity for such input. Wi Waikari said that what he wanted was an apology to his family, but he was not offered any opportunity to ask for that.[709]

Survivors said apology letters used language that was careful to avoid any legal responsibility. To their mind, this minimised the abuse. Frankie Vegas said her letter of apology was extremely circumspect and "said something along the lines of, 'things

like that should never happen to children in care', but they never said what 'that' is".[710] Georgina Sammons said representatives from the Ministry of Social Development apologised to her at a settlement conference in such empty words that "it felt like they didn't even know what they were apologising for ... I was so upset and angry. I just remember sobbing".[711]

Some survivors wanted apologies from government officials in positions of real authority, such as the responsible Minister, the Prime Minister or Governor-General. Some Catholic survivors also wanted someone highly ranked, such as the diocesan bishop, to give an apology.

Manakore ana ngā utu pūtea - Financial payments are inadequate

Most survivors considered their financial settlements were not nearly enough to compensate for the pain and suffering they had endured or to help them rebuild their lives. Individuals whose physical and sexual abuse had profoundly affected their entire lives received payments in just the thousands or tens of thousands of dollars. Toni Jarvis said the $38,000 he received was a poor substitute for a life lost.712 One survivor, Mr A, said institutions failed to fully appreciate the harm caused by abuse at such a young age. He said he had endured 40 years of despair, anguish and anger, and it had destroyed his life. Yet the Ministry of Social Development's response was "sorry, here is $18,000 ... don't hassle us any more".[713]

Roy Takiaho said handing out money was the only answer State and faith-based organisations had. He said their goal was not to rebuild lives but to close cases as soon as possible. He said financial payment meant nothing to him – it was something to help his family. "I wanted answers. Those answers came in the form of money because that's the only way the [g]overnment could answer it ... just give a couple of dollars and sweep it under the carpet."[714]

One anonymous survivor said she was offered $5,000 an offer that left her feeling suicidal. She said: "I've gone through all this, opened up, and this is what I get."[715] Earl White said his settlement offer was "a joke and insult", given the repeated sexual and physical abuse he had experienced, and given that the courts had confirmed his abuse.[716] Mark Goold considered the $12,000 he was offered for a lifetime of abuse to be a disgrace and an insult.[717] Anthony Waller, who was sexually abused by a Catholic priest at 12, asked for $50,000 in compensation and was offered $25,000.[718] He said it was a cynical and heartless person who could offer him half what he had sought, and he did not believe the church's argument that it lacked the means to make bigger settlements because "we have been giving them money for years – we have made them rich".[719]

State agencies calculated their monetary payments based on the acts of abuse, not the ongoing effects of abuse. Lawyers Sonja Cooper and Amanda Hill said the

"it's about what's right and fair and just for not just the short time we were kids but for the many years since we have had to suffer and fight to be heard and be ridiculed and called liars."

payments would be much higher if the effects of abuse were taken into account.[720] A survivor echoed this sentiment, arguing there should be a fair and independent assessment of the life-long effects of abuse, such as lost education.[721]

Most survivors said their payments were in no way enough to restore their lives or the lives of family members and others affected by the abuse. For some, the money went on repaying debt or supporting family members. Frankie Vegas said the amount simply "wasn't enough to change the projection of my life or my kid's lives in any significant way".[722] David Crichton pointed out the $15,000 redress payment he received for years of abuse paled in comparison to the approximately $10,000 per year his daughter received under the government's Working for Families package.[723] He said payments needed to be more in line with the actual costs that survivors and their families incurred in recovering from the abuse.

> *"I feel as though I have traumatised my family because of the way that I am. But the Ministry of Social Development don't see this kind of trauma as something that is a central part of the redress process."*[724]

Manakore ana te puretumu i te āhua ki te mana me te oranga
Redress was inadequate to restore mana or oranga

Monetary payments and an apology are the key parts of settlement offers, and for most agencies and faith-based institutions, are the only redress offered. A small number of counselling sessions are included in some offers and at times, other forms of non-monetary redress have been provided. But what survivors said they also needed was help with employment training, housing support and other practical ways to get their lives back on track. Tanya and Georgina Sammons said a big impediment was their lack of education and having to build connections to their family and culture from scratch.[725] Loretta Ryder said: "I don't really want the money. I want a house for all of my kids on our land. The answer for me lies with the people."[726] Another survivor, Mr A, said The Salvation Army needed to offer substantive forms of support, not just money.[727] He was unhappy with the dollar value put on his years in care, and said he would have preferred to have someone actively help in his prison-release plan and a life coach to help him stay out of prison.[728]

For many Māori, restoring the mana of the survivor, including their wider whānau, is necessary to putting right the harm that was done. This includes restoring connection to whakapapa, community and whenua. One survivor explained, "connection and relationships are what heals people. When you take away those connections you take away the wellbeing of that person".[729]

Māori survivors have told us that they wanted specific steps to support individual and collective well-being, and help to connect or reconnect to whakapapa and culture.

Pacific survivors have also emphasised wanting cultural restoration, including for example learning language.

Keith Wiffin said he considered redress to be about "restoring the wellbeing of those people affected [and] this means their health and their broader needs: things like counselling, education, housing."[730] Another survivor said she was "seeking justice for my spirit, my heart".[731]

Tē taea te urupare i ngā pāmaemaetanga ki te whānau
No ability to respond to harm to whānau

The impacts of abuse in State and faith-based care have been felt far beyond the individual survivor. Families, whānau, hapū, iwi and wider communities have lost their children and young people to institutional care. Some disabled adults remained (and some still remain) in institutional care for decades, even their entire lives. Some of these survivors were permanently cut off from their whānau and community.

While survivors understood redress in fairly narrow terms, many Māori see restoration as a broader concept involving whole communities, and in particular younger generations. Dr Rawiri Waretini-Karena described this as "the intergenerational ripple effects stemming from previous New Zealand Governments, and their focus on systemically breaking down traditional Māori societies".[732] For most Māori survivors, their removal from whānau has had a lifelong impact on their overall well-being, sense of belonging and place in the world, diminishing their mana and the mana of their whānau, hapū and iwi. Many survivors carry a deep sense of shame or whakamā at being unable to speak their own language and suffer what has been described to us as 'language trauma'.

Neta Kerepeti said the connection or reconnection with whānau had been the most effective way of restoring her life. Beyond redress, system change was needed to ensure that "whānau, hapū, and iwi Māori are equipped to support our own".[733]

Some survivors have become angry, violent or depressed as a result of whānau dislocation and the abuse they suffered, and are keenly aware that their loved ones have suffered the consequences of that behaviour. Survivors said redress should include help for those individuals, too.

Ngoikore ana ngā purapura ora - Survivors felt powerless

For most, the experience of being taken into care was extremely disempowering, and this was made worse by experiences of abuse. As a result, they could not trust the people or institutions responsible for their care. Survivors see the redress process as continuing this power and control imbalance.

Survivors typically have few, if any, resources and are dealing with the ongoing traumatic effects of their abuse, lack of experience necessary to work through legalistic and bureaucratic processes, and have life experiences that tell them they will be marginalised and dismissed. Many faced redress processes without a lawyer or other advocate. For faith-based survivors, family and community pressures can make these issues worse.

Several survivors told us they felt pressured to accept the offers made, rather than risk further delays and have a worse result in the end. This inequality makes funding for legal assistance. One survivor told us that "there is no way I could have gone through this process without a lawyer … How was I ever going to stand up to the Catholic Church on my own against all their power and money?"[734] Georgina Sammons told us, "I didn't want to accept but I didn't feel like I had a choice. I was told that if I didn't there was a good chance I would come out with nothing for me and Alva. It had already been nine years. Reluctantly, I accepted the offer."[735]

Others also said they accepted the money because they were in debt or needed the money for other reasons. Darrin Timpson told us: "It was made clear that it was take this or get nothing. I had spent most of my adult life in prison and I owned very little. I also had a few debts."[736]

Legal representation does not in itself rebalance the scales. Judith Perrott told us that the power of the State was overwhelming for her and affected her ability to seek redress. While she was seeking redress, she had not known she could seek legal representation. Later she asked if she could sue the government, "the lawyer looked at me and said something along the lines of, 'don't be stupid, the government has more money than you'. I walked out crying."[737]

He nui ake ngā hua kino kua puta i ngā hātepe puretumu
Redress processes have caused further harm

Many survivors found the experience of seeking redress to be itself highly distressing and traumatic. They are required to recount their experiences to strangers in often very considerable and intimate detail again and again to different people. In the process, they relive the abuse in a very powerful way. Survivors appreciate that some aspects of this process – such as the disclosures – are unavoidable, but the effects can be minimised through compassion, empathy and sensitivity – which are missing from all redress processes. Instead, they were met with disbelief, opposing attitudes and demands to prove events that took place decades ago, which was impossible as it involved children in situations where there were no witnesses and no evidence.

> *"I felt like I was being treated like a liar, even though no one actually took the step of talking to anyone who might know."*[738]

2.6: Ētahi atu ara puretumu
Other avenues for redress

Whakatakinga - Introduction

As we have set out above, there are many different measures that can contribute to setting right the harm and restoring the mana and oranga of a survivor of abuse in care. As well as monetary payments and wellbeing support to address the harm, survivors may want, for example, the ability to hold an abuser or agency accountable for their actions, and steps to ensure abuse can't happen again. Some want redress that recognises the harm caused to their wider whānau or community.

We have already looked at the shortcomings of the redress processes run by State agencies and faith-based institutions in providing for these things. But these processes do not operate in isolation. Survivors have sought some forms of redress from other bodies and mechanisms with varying success, and there are still others that may be available to them.

Some survivors have, for example, sued a person or an agency to hold them to account and get a financial payment if they are at fault. Others have accessed wellbeing services through ACC. Some have gone through the criminal process to have their abuser held to account. Other, less-used avenues, such as the Human Rights Review Tribunal, Health and Disability Commissioner, Ombudsman, the Waitangi Tribunal, and professional disciplinary bodies may also be able to provide some remedies to some survivors of abuse in care.

Each of these mechanisms is limited in scope and effectiveness, and none of them – either alone or together – are capable of providing the redress required to restore the mana and oranga or wellbeing of survivors and their communities. However, they form part of the broader system of redress available to survivors, and so form part of the bigger picture informing our recommendations about redress going forward. We outline them below.

Hātepe whakaea nawe - Civil litigation

Civil litigation – taking a Crown agency or faith-based institution to court – is in general a stressful, expensive, slow, and adversarial process for survivors of abuse in care. It is also a route blocked by significant legal barriers, and as such is not currently a viable option for the vast majority of survivors.

Many survivors have filed claims in court. We have already criticised the Crown for the aggressive way it responded to these claims, and the way its conduct made civil

claims extremely difficult for survivors. But beyond this conduct, there are some inherent practical and legal limitations to civil litigation that currently make it very difficult for survivors to bring a successful civil claim in Aotearoa New Zealand.

Despite the poor odds, and the availability of out-of-court claims processes, some survivors remain determined to go to court. It offers the advantage of being independent of the agencies involved in the abuse and courts can award compensation worth far more than out-of-court settlement offers. Some survivors want a forum in which to test facts and get institutions to answer for their actions in public. Some want to test claims that are not specifically recognised in a particular claims process, for instance, a claim for a breach of rights under the New Zealand Bill of Rights Act 1990.

Civil litigation remains the main alternative to the out-of-court claims processes for financial redress, and the only place to turn if a survivor is unhappy with the offer made through an out-of-court process. It therefore remains an important pathway for survivors, but one plagued by obstacles.

Taero ture - Legal obstacles

Survivors face a whole raft of legal barriers to pursuing civil cases for abuse in care in court. These include:

- accident compensation legislation that bars those with cover from suing in court for compensation
- the Limitation Acts of 1950 and 2010, which (with some exceptions) provide a defence to claims more than six years old
- immunities under mental health laws and a related restrictive time limit for bringing claims
- the difficulty in identifying the right defendant
- the difficulty in establishing that an organisation is liable for the wrongful conduct of an individual
- the difficulty in proving, in the absence of written records or other supporting evidence, that specific abuse occurred in care
- the difficulty in proving the abuse suffered in care caused problems later on, such as medical or mental health conditions, or struggling to get and hold on to employment.

In the following sections, we look at each of these hurdles.

Ture utu paremata tūponotanga - Accident compensation legislation

A survivor cannot get financial compensation through the courts for an injury caused by abuse if that injury is covered by accident compensation legislation. That means that a survivor cannot get compensation through the courts for physical injuries (including intentional injuries, for example from physical abuse) caused after April 1974, as well as mental injuries caused by sexual offences when the first date of treatment for those injuries is after 1992. The scheme is regarded as a "social contract": in exchange for not being able to claim for wrongful injury through the courts, New Zealanders are able to receive various forms of support, such as financial payments and counselling.

A survivor might still be able to seek a payment known as exemplary damages for an injury in the worst cases, but they are very difficult to get. These payments are only granted if the defendant's actions were outrageous, as punishment for their wrongdoing. Typically, amounts of exemplary damages awarded by the courts are not high.[739]

Ture tepenga - Limitation Acts

Many abuse in care claims have been defeated by time limitation defences under the Limitation Act 1950 and Limitation Act 2010 – essentially defences that can be raised if a person takes too long to bring a claim after the abuse happened. One judge described the passage of time between the abuse and the court claim as an "insurmountable hurdle".[740]

The Limitation Act 1950, which has applied to most claims so far brought to court, is not a statutory bar that prevents a claim being heard in court, like accident compensation legislation, but a defence that a defendant can choose to raise. A defendant can raise the defence if a case is brought more than six years from the date the event happened.[741] For claims involving bodily injury including psychiatric injury, a person must bring court action within two years. They can bring a claim after that with the leave of the court or the consent of the defendant, but the six year period still applies.[742]

One exception is if a survivor can prove a "disability", such as being of unsound mind or under the age of 20, that prevented them from bringing the claim earlier. Another exception allows the six-year period of time to start from a date that a survivor can show they could have reasonably discovered that the defendant's conduct caused their suffering. This exception recognises that often survivors remember their abuse, but do not necessarily link it to their current difficulties. Since the case of brothers Paul and Earl White (not their real names), the courts have adopted a stricter

approach to determining whether a claimant should have reasonably realised the cause of their harm. This exception is now confined to cases involving sexual abuse.

The Limitation Act 2010 has replaced the Limitation Act 1950, but it applies only to claims for abuse that happened after 2011. The 1950 Act continues to apply to claims brought before 2011.[743] Since 2011, if a claim is made about abuse as a child, the court has a discretion to order a payment of damages even though the claim is outside the time limits of both Acts.[744] But again, it is for the survivor to persuade the court to allow the claim, rather than for the Crown or faith-based institutions to convince the court that it should not.

The Crown has always exercised its right to rely on limitation defences in defending abuse in care claims in court. Faith-based institutions can also rely on limitation defences and have chosen to do so in the past. The result, as one judge noted, has been to preclude survivors who "have undoubtedly undergone regrettable suffering during their childhood and adolescence" from seeking legal redress.[745]

Ture hauora hinengaro - Mental health legislation

Survivors who were inpatients in psychiatric care settings face further barriers under two Acts: the Mental Health Acts 1911 and 1969. These Acts are no longer in force, but apply to some historical claims. The Acts give staff members and others acting in pursuance, or intended pursuance, of the Acts immunity to civil claims and criminal liability.[746] The immunities do not cover actions done in bad faith or without reasonable care. However, a claimant must apply for leave of the court to bring a claim about such an action, and has only six months from the alleged act to do so.[747] As a result many survivors have been unable to take historic claims to court.

Courts have accepted that some acts, such as sexual abuse or gratuitous violence, are not able to be done in pursuance or intended pursuance of the Act, so fall outside the immunity, and do not require leave. It remains unclear whether other acts, for instance the administering of electro-convulsive therapy to "correct bad behaviour", also fall outside this immunity.[748]

Ture Akihana Karauna 1950 - Crown Proceedings Act 1950

The Crown Proceedings Act 1950 is yet another barrier to redress for survivors of abuse in State care. With limited exceptions, survivors cannot directly sue the Crown or the State agency that had a hand in their abuse. Instead, they must identify the individual Crown employee or employees responsible for the abuse and prove that the Crown has legal responsibility for the employee or employees' wrongdoing. However, survivors often struggle to identify their abuser or abusers, particularly if the abuse happened a long time ago as a child. If they can't do this, they can't sue

the Crown. Also, the need to pin the responsibility for abuse on individual employees means survivors cannot argue they were a victim of systemic negligence by one or more government agencies. For example, a survivor can't successfully claim the Crown was responsible for their abuse because of the way the agencies were set up and run. In 2014, the Law Commission recommended legislative changes to allow the Crown to be sued directly.[749] The Government of the day rejected the recommendation, but survivor advocates continue to press for such a change.[750]

He uaua te whakarite taumahatanga me te tohu i te kaikaro
Difficulty in establishing vicarious liability and identifying defendant

Survivors can find it difficult to establish the vicarious liability of the Crown, faith-based institution or other organisation for the wrongful acts of an abuser or person responsible for abuse. Specifically, they can struggle to establish the Crown's liability if they were abused by an employee of a third-party care provider. It is even more difficult if the abuser was someone other than the caregiver, such as another child in care or a foster sibling.

Yet another difficulty is identifying the agency or body to sue. Some institutions or incorporated entities no longer exist or are unincorporated bodies without any distinct "legal personality" and so can't be sued directly. (Instead, survivors must identify office-holders such as trustees.) Identifying the defendant to sue can be complicated even when an institution still exists. The Catholic Church, for example, has a complicated system of structure and governance that can make it extremely difficult to determine which legal entity should be the subject of a claim of abuse. Some settings in which abuse took place are operated by multiple entities, for example religious schools (with possible involvement of school boards, Ministry of Education, and faith-based institutions), or situations where private care providers have taken on the responsibility of State care. In these settings, it can be difficult to know which entity had responsibility for abuse.

He uaua te whai taunakitanga tūkinotanga me te whakarite haepapatanga i ngā wāhi
Difficulty in proving abuse took place and establishing institutional responsibility

Survivors can face great difficulty proving that abuse occurred. Abuse, because of its nature, is not often documented. Institutional records from the time of the abuse may have been lost or destroyed, and any that do still exist may be minimal, cryptic or incomplete. Witnesses may have died, be suffering from serious medical conditions or be unable to be found. In the absence of written records or other corroboration, proving specific abuse took place can sometimes be extremely difficult, particularly for survivors with learning disability or psychiatric illness. Even if they succeed in

this, survivors face other legal hurdles. For example, if bringing a negligence claim against an institution, they have to establish the institution had a duty of care that it breached, and that the abuse caused problems in later life. Each of these elements can be hard to prove. Causation can be particularly difficult. In the case of the White brothers, for example, even though the judge accepted they had both been physically abused, and Earl had been sexually abused while in care, the judge held that the pair had not proved that the abuse had a material impact on their lives. The judge found that the abuse and neglect suffered at the hands of their parents was the main cause of their problems later on, and so the State was not responsible for any damage.[751]

Ētahi atu taero hei puretumu i roto i te kōti
Other obstacles to redress through the courts

Civil litigation is, by its nature, a difficult route for anyone seeking redress, and this is especially so for survivors of abuse, as explained next.

He whāiti ngā kōwhiringa puretumu - Redress options narrow

Civil litigation may not be able to give many survivors the redress they seek even if their claim is successful. The best outcome from civil litigation is financial. As we have already discussed, financial compensation for the abuse suffered while in care is important to some, but many want other things, too, that address their oranga, or wellbeing, and mana, such as apologies, restoration, assistance with getting further education and/or employment training, locating family members and counselling. The courts don't normally provide any of these. Even if a court does award financial compensation, the survivor will not receive it if the defendant cannot pay, or if its assets are beyond reach.

Also, the courts in Aotearoa New Zealand are founded on western values and have typically given only very limited recognition to tikanga principles. It is unclear to what extent they would recognise familial and cultural harm suffered by many survivors of abuse in care (for example loss of sense of identity, culture, language, belonging and family and whānau connection),[752] or the extent to which they could consider the impact of abuse on survivors' family and whānau, including later generations of family and whānau.

Ka roa te whakaeatanga nawe, ka nui hoki te utu
Civil litigation is drawn-out and expensive

Litigation can be a long battle for survivors, often dragging on for years. Survivor Leoni McInroe's lawyer worked on her claim for 10 years, and the eventual settlement

came through an out-of-court agreement, not the courts. The White brothers' claim took 11 years. Describing the long process, Earl White said

> *"[it] felt like torture, and in some ways was worse than the abuse I suffered ... it just kept going on and on".*[753]

Litigation is also very expensive, and survivors, because of their life circumstances, tend to have little money. Many qualify for government-funded legal aid, which pays for a lawyer they would not otherwise be able to afford. However, even then legal aid recipients face having to pay off large legal aid debt, unless the amount is written off as part of a settlement or covered by a court order. For instance, Leoni McInroe had to repay $49,000 of legal aid. Survivors who don't qualify for legal aid must fund court action themselves. Survivors used to find it much harder to get legal aid because it was based in part on an assessment of the likelihood a case would succeed. Given the barriers in the way of a successful claim by survivors, few applicants received assistance.

Legal aid is now available for out-of-court processes as well as court proceedings. Funding for historic abuse claims topped $20 million. A review of legal aid in 2009 found the administration cost alone of assessing survivor applications was significant. The review said such applications, if all approved, would put huge pressure on the resources of the Legal Services Agency, which administered legal aid.[754]

Civil litigation is not just a very expensive exercise for claimants. The legal costs for both sides are often significantly greater than the amount that would be awarded to a successful claimant. This is well illustrated in the case brought by a survivor in X v Attorney-General,[755] where MSD paid legal fees of $336,365.15 to Crown Law and $351,251.70 to external counsel for the period of January 2015 to 30 June 2016.[756] X's legal counsel, Cooper Legal, received legal aid of $305,000 for its work on the case. X eventually settled his case for a dramatically smaller figure, receiving $60,000 from MSD and $20,000 from an NGO.

Survivors, especially disabled survivors or those living in provincial or rural areas, can have trouble finding lawyers with the necessary experience in abuse in care cases. People with learning disability typically need a lawyer to spend more time with them on their cases, but there is no recognition of this extra burden by the legal aid process.[757]

Ka pāmamae, ka hēmanawa hoki ngā purapura ora i te āhua ki te whakaea nawe
Civil litigation can be traumatic and emotionally distressing for survivors

The clash between institutions and survivors in the courts is a vastly uneven one. Institutions are well financed and well equipped with legal representation, while

survivors are often on a shoestring. It is uneven in other ways, too. Survivors often come from the most marginalised, and often most socially disadvantaged and impoverished, parts of the community. Their abuse usually leaves them with a poor education, serious health conditions and other continuing effects of their trauma. These are serious deterrents to civil litigation. But there are still others: survivors must recount in detail their abuse, a highly sensitive and distressing subject, to their lawyer, first to establish there is a valid claim to make, and later in a more detail – sometimes over multiple meetings – to develop a statement of claim. Then they must check the accuracy of documents prepared for the case that lay out the abuse in black and white. There may be one or more examinations by a psychiatrist, who will go over the abuse again. Then they must give evidence in court and be cross-examined by defence lawyers, whose role is to raise doubt about the truth of what the survivor is saying. All of this, over an extended period of time, can be very traumatic.

Kaupapa utu paremata tūponotanga
Accident compensation scheme

The accident compensation scheme can be both a source of redress and an obstacle to redress for survivors. As the former, it can provide counselling and payments for personal injury. As the latter, it is, as already noted, a bar to pursuing injury claims through the courts. Many survivors said they had gained a lot from counselling paid for through the scheme, which is administered by the Accident Compensation Corporation (ACC). However, survivors were also frustrated by many aspects of the ACC system. In large part, this is because the purpose of ACC was never to handle abuse in care claims and nor was it designed with this in mind. Because of this, ACC offers a patchwork of coverage for abuse in care that includes only some time periods and types of injury. The type and level of compensation available to abuse in care survivors is limited by the Accident Compensation Act 2001. Many survivors said that making a claim for personal injury could be complicated. Survivors found it tiring to be required to prove their need for entitlements time and again.

I waihangatia te kaupapa hei whakakapi i te whakaeatanga nawe
Scheme devised to replace civil litigation

The accident compensation scheme was introduced in 1974 to overcome many of the problems with civil litigation just discussed, such as high cost, difficulty in identifying defendants and proving causality and long delays. In general, payments are lower than the courts may award, but the process of getting them is easier and faster. As a personal injury insurance scheme, it provides treatment, rehabilitation and some compensation to people injured in an "accident", which is broadly defined

to include intentional injuries like assault. It is a no-fault scheme, meaning it provides coverage regardless of who caused the injury.

Ngā whara ka whai wāhi atu e ai ki te kaupapa - Injuries covered by scheme

The accident compensation scheme covers a range of personal injuries, both physical and mental. Eligibility for survivors is complicated because the dates for coverage vary according to the type of injury. ACC considers mental or physical injuries resulting from sexual abuse to be "sensitive claims".[758] The types of personal injuries most relevant to survivors are:

- *Physical injuries from physical violence or sexual violence:* The date of injury for physical injuries, or mental injuries resulting from physical injuries, is the date that the physical injury was sustained. Coverage for physical injuries begins from 1974 when the accident compensation scheme was introduced. Only injuries from an application of force, for example, from assault, are covered. This means that physical injuries resulting from neglect, for example, are not covered.
- *Mental injury caused by a physical injury:* A claimant who has suffered a physical injury that is covered by the accident compensation scheme and that has caused a mental injury may be covered for both injuries. Some survivors are badly affected by abuse but not to the clinically significant level of dysfunction required to be covered.[759] For those that do have clinically significant dysfunction, it can be difficult to prove a causal link between the physical injury and the condition. There is no cover for mental injuries suffered by witnessing, or being threatened with, abuse. Nor is there cover for emotional or psychological abuse.
- *Mental injury caused by sexual abuse:* A claimant can receive cover for mental injury in the absence of physical injury if the mental injury was caused by certain sexual offences including sexual violation, sexual connection with a child or indecent assault.[760] As with mental injury caused by physical injury, the mental injury must meet a level of clinical significance, and the claimant must be able to show that it was caused by sexual abuse. The Accident Compensation Act 2001 considers the date for these mental injuries to be the date the claimant first receives treatment for them, not the date of the abuse that caused them.[761]

Hātepe kerēme - Claims process

A person's general practitioner, physiotherapist or sensitive claims counsellor usually makes a claim for cover. These treatment providers act as gatekeepers to ACC personnel, potentially imposing their own views about the merits of their client's case in the claim for cover. Despite this, treatment providers often do not understand the compensation system particularly well, especially in relation to lodging historic or sensitive claims.

Legal aid is not available to help a survivor make a claim for cover, although it is available if ACC rejects a survivor's claim. Survivors must supply their full medical and care records, which can mean they need to contact hospitals, doctors, social welfare agencies and counsellors that they have dealt with over the years.

Once ACC accepts a claim for cover, a claimant can apply for entitlements. These are set out in law and can include treatment for the injury, counselling, a lump sum payment or independence allowance for permanent impairment, weekly compensation for temporary impairment and social and vocational rehabilitation.

Ngā momo whakawhiwhinga - Types of entitlements

For survivors suffering physical injuries from physical or sexual violence, the injury, and the supports and entitlements they require, are often quite easy to show. However, for survivors with mental injuries, who have traditionally faced more stigma and disbelief, it can be harder to access some entitlements, such as financial or rehabilitative ones. Survivors of abuse in care often have both physical and mental injuries which can make seeking entitlements complicated and difficult.

Āwhinatanga - Counselling

Since 2010, ACC has provided counselling services to 68 per cent of people who have lodged sensitive claims.[762] ACC allows sensitive claimants up to 14 hours of counselling "pre-cover" and throughout the cover determination process. Survivors must then have their claims accepted to receive further counselling. Only 41.5 per cent of survivors who received initial counselling continued with further sessions.[763]

There are not enough ACC approved counsellors to meet demand. More than 10,000 calls from sexual assault survivors were unable to be accepted by suppliers of mental health supporting the year to September 2021, due to a lack of capacity.[764] For those whose requests are not rejected and who manage to get on a waitlist, the average national wait time for an appointment is currently nine weeks.[765]

Many survivors said counselling was helpful. However, several also discussed how they felt pressured by ACC to get well, and how any sign of improvement was taken as evidence that they no longer needed counselling.

Utu paremata ā-wiki hei utu i te kore i whiwhi pūtea mahi
Weekly compensation for loss of earnings

Weekly compensation is for people whose injuries have left them temporarily unable to work. Eligible claimants receive 80 per cent of lost earnings or loss of potential earnings at 80 per cent of the minimum wage. To receive weekly compensation, survivors must prove that they are earners, and also provide evidence they are unable

to work. Only 1.25 per cent of those who have lodged sensitive claims since 2010 have received weekly compensation,[766] likely because they are not able to show they are "earners". This particularly impacts disabled people, as many disabled people face significant barriers to employment and so are less likely to be in paid work before the injury.[767]

Tahua motuhake me te pūtea moni utu paremata mō ngā pānga roa
Independence allowance and lump sum compensation for permanent and long-term impairment

Survivors with permanent or long-term impairment caused by injury can receive either a one-off lump sum payment or an ongoing independence allowance. The independence allowance is calculated as a weekly amount (although paid quarterly) that a survivor receives throughout the period that they are considered impaired. Which payment a survivor qualifies for depends on the level of impairment and the date that the injury occurred. Many survivors feel frustrated that they are unable to choose between a one-off or ongoing payment.[768]

Few sensitive claims result in a financial payment at all. Of the total sensitive claims lodged since 2010, lump sum payments and independence allowances have only been paid to 2.4 per cent and 6.6 per cent of claimants respectively.[769] The sums involved are not generous. The average lump sum payment was $7,764, while the average total amount paid to claimants through independence allowance payments was $3,936.[770] Although difficult to directly compare, the biggest lump sum payment was $45,648 and the largest weekly independence allowance was $94.97 per week.[771]

To qualify for either payment, a medical practitioner must certify that the claimant's injuries are permanent and stable. For sensitive claims, this involves undergoing a psychological assessment to determine the level of impairment. Claimants are then given a percentage of impairment. The higher the percentage, the higher the compensation is. The impairment must be caused by the injury. For some survivors, part of their impairment may be perceived to be caused by other environmental factors, unrelated mental health issues, or disability related impairments. This can reduce the level of impairment for the purpose of calculating the entitlement under ACC.

This experience is distressing for survivors, who find it dehumanising to have their trauma reduced to a percentage. Kathleen O'Connor, who spent years fighting ACC over her sensitive claims, said

> *"ACC used that assessment to tell me that I was 25 per cent impaired. I don't get how you can put a percentage on a person … how can you put a number on people's trauma?"*[772]

Disabled survivor Matthew Whiting also described his frustration with this approach: "the current ACC Sensitive Claims assessment model for sexual abuse is crap. It looks at you based on a deficit-model. I can function at a high-level by compartmentalising situations and I can continue to work. It's as though I had to prove the impact on my life of the sexual abuse before I could get compensation. This is a narrow definition of my abuse and the impact it had and continues to have on my life."[773]

Whakamātūtūnga - Rehabilitation

Claimants may also apply for rehabilitation services from ACC. These include social rehabilitation (such as aids, appliances and home help) to help maximise the claimant's independence and vocational rehabilitation (such as training and job trials) to help them return to the workforce as much as possible.

Rehabilitation is most commonly provided to those with physical injuries. Of the sensitive claims lodged since 2010, only 1.3 per cent have received vocational rehabilitation and only 8.7 per cent have received social rehabilitation.[774] A practitioner told us that, in her experience, survivors with sensitive claims must usually specifically request social rehabilitation in order to receive it.[775] Survivors must also undergo assessment to qualify for these services. For social rehabilitation, this involves a needs assessment which can involve sharing very personal information with assessors. For vocational rehabilitation, survivors must be incapacitated and receive weekly compensation in order to be eligible. They are required to undertake occupational and medical assessments at the beginning and end of their planned rehabilitation. The vocational independence process has been criticised as once claimants are deemed able to return to work, they are removed from the accident compensation scheme even if no jobs exist for them in reality or are far removed from their training.[776]

Ngā wheako o ngā purapura ora me ACC
Survivors' experiences with ACC

Many survivors told us they had difficulty understanding how the accident compensation scheme worked and how to make a claim. Some spent years unaware they were even eligible to make a claim until being told by family, work colleagues or doctors. To access entitlements, survivors must first satisfy various legal tests and undergo medical and/or psychological examinations. Many survivors describe the process as long, intrusive and re-traumatising. One disabled survivor described the burden of needing to constantly re-tell what happened in order to access support. They said: "

> *It is too painful to re-tell and not everyone can do this. Disabled people already have huge barriers to access any support service".*[777]

Some survivors were satisfied with the service and entitlements they received from ACC, and many spoke positively about the benefits of counselling. Phillipa Wilson said ACC set her up with counselling as soon as she made contact, and it also told her she was entitled to a payment. She said staff were "amazing," "supportive" and always "checking in on me".[778]

Many others, however, described ACC's processes as complex and difficult to navigate. Frankie Vegas said she found dealing with ACC a frustrating battle. She said staff did not ask how they could support her through the process, and she felt like they were only interested in "ticking boxes".[779] Leoni McInroe said ACC's many assessments left her feeling "vulnerable and afraid" and "powerless" to decline any of its requests because it might jeopardise the outcome of her claim, adding that she felt "unsupported, intimidated, demeaned, vulnerable and often violated during the entire process".[780]

Many survivors were unhappy with the repeated intrusive medical assessments and the need to continuously prove their eligibility for cover. Assessments for eligibility were sometimes delayed because of a shortage of qualified assessors. For some, this repeated retelling meant they had to relive their trauma over and over again. One survivor described dealing with at least 15 people and divisions in 18 months.[781] Another, Ann-Marie Shelley, said the succession of assessments left her with the impression that ACC would continue sending her to different psychiatrists until it got the decision it wanted.[782] During Kevin England's assessment, he was asked questions about his abuse that he had not even discussed with his counsellor and he found the entire process very intrusive and upsetting so early in his recovery.[783] Kathleen O'Connor described how her bad experiences with sensitive claims prevented her from making a claim about a later rape, saying: "I just didn't want to go through that same tunnel again".[784]

Survivors also expressed concerns about their privacy and that staff and assessors were able to access their highly personal information. Sensitive claims may be managed by a single staff member, but sometimes claims are handled by larger teams. One claimant was distressed to discover that since his claim had been closed, it had been accessed by more than 90 staff, and more than 350 times.[785]

ACC said it was aware of the impact of requiring survivors to see a string of assessors and was taking steps to streamline the process by forwarding previous assessments to subsequent assessors (with individuals' consent) to limit survivors describing their abuse once again. It said it funded two free services – Way Finders and Workplace Advocacy Service – to help people through the claims process, although not review hearings and appeals.

Arotake me ngā pīra - Reviews and appeals

ACC must issue a decision on any request for cover or an entitlement in a timely manner, and all decisions have a right of review. ACC told us it takes on average 93 days to make an initial decision about whether to accept a claim for cover.[786] However, this does not include the next step, a decision on entitlements, which is often delayed due to a lack of qualified staff or assessors.

ACC sends review applications to an independent organisation to conduct a review hearing and issue a decision. Claimants have the right to appeal to the District Court and, in some circumstances, the High Court and Court of Appeal. Although reviews are supposed to be a low-level examination of a claim, in reality, they more closely resemble litigation.[787] Claimants must prove their case on the balance of probabilities. Almost every review involved additional medical reports and the gathering of more supporting evidence.[788] The cost of psychological or psychiatric reports can easily be $2,000 or more.[789]

Given the standard of proof required and the complexity of an ACC review or appeal, claimants often feel they need legal representation. This can be very costly, however, and the financial threshold for legal aid eligibility makes it hard to qualify. Very few lawyers working for Legal Aid specialise in accident compensation law. For those who do get advice the aid is usually in the form of a repayable loan.

Āraitanga - Prevention

ACC is legally required to promote measures to reduce the incidence and severity of personal injury. As part of this, they are required to collect, coordinate and analyse information about injuries to help inform prevention efforts. However, ACC recognises that for sensitive claims asking for intrusive details could re-traumatise claimants or make it harder for them to lodge a claim. Because of this, ACC does not ask that claimants disclose the identity of their abusers or more information than is needed for the cover decision. To help with prevention, ACC has set aside $9.2 million from the 2020/2021 financial year to fund programmes preventing family violence and sexual violence.[790]

Ētahi atu ara - Other avenues

The principal avenues for redress for survivors are government agencies' out-of-court claims processes, civil litigation and the accident compensation scheme. Yet there are other avenues, that can be used to achieve some things and go some way towards restoring the mana or oranga of survivors of abuse in care in some cases.

The Human Rights Review Tribunal, for example, can hear cases about some rights breaches without as many of the technical barriers as confront civil

litigants, while the Waitangi Tribunal can investigate breaches of te Tiriti and make recommendations for collective redress for Māori. The Office of the Ombudsman can independently inquire into and make decisions on issues that may arise as survivors work their way through claims processes. Survivors can try to hold perpetrators to account and prevent them from abusing others using the criminal justice system and professional disciplinary bodies. The Office of the Health and Disability Commissioner and the Office of the Children's Commissioner can make recommendations to prevent abuse, which is a form of redress. None, however, can offer a full range of redress options, and survivors who go to them can face delays and underfunded services.

Pūnaha manatika taihara - Criminal justice system

Some survivors want their abusers investigated, charged and convicted. The conviction of a survivor's perpetrator provides a measure of accountability and justice for the survivor and can also be an important step on the road to healing. Regrettably, very few perpetrators of abuse in care have ever stood before a court to answer for their actions. In the past, nearly all complaints about perpetrators never got beyond most people's first point of contact with the criminal justice system – Police. Once a complaint to Police is made, the survivor cannot control the criminal process – it is up to Police whether charges are laid, how they are prosecuted and what sentence is sought.

Survivors' credibility in the eyes of Police was critical. The allegations of those who had criminal convictions or had been in psychiatric institutions were often treated with scepticism. Some disabled survivors require communication assistance to share their experiences – for them, it can be a struggle even to lay a complaint. Deaf survivors struggled to be heard because sign language interpreters were rarely available. Many survivors told us that Police did not investigate their complaints because they were uninterested, considered it a hassle or did not believe the complainant. In some cases, this happened despite admissions of guilt from the abusers. Some survivors told us that Police dismissed them as "trouble-makers", threatened them with arrest for wasting Police time or returned them to the institutions where they were abused.[791] Survivors of sexual abuse told us Police minimised their experiences or blamed them.[792]

Many survivors are reluctant to approach Police because they have previously been disbelieved by Police, or had bad experiences with other authority figures. Donald Ku told us that when he originally complained to Police about his abuse, he was told they would not pursue his complaint because his abuser had already been sentenced. When Police did later investigate abuse at the institution he was at, he no longer felt able to talk to them: "I was quite distressed and couldn't keep still so I declined to

make another statement. I had learnt not to trust people in authority, and I was afraid I'd have to pay back the $50,000 I was given."[793] Other survivors decided against reporting, concerned that they would not be believed or, worse, that their abuser would retaliate against them in response.

Survivors who have gone to Police in recent years are more likely to report a better experience, although many have still felt Police did not believe them and failed to respond in a trauma-informed way. One survivor, Ms LL, was left feeling suicidal after a police officer whom she found cold and insensitive made an unexpected visit to her home.[794] Feeling betrayed by earlier Police inaction, she ultimately decided against making a police statement because she considered it might jeopardise her mental health. She died not long afterwards.

Many survivors said Police were only now treating as credible allegations they had made many years ago. Charlie Symes waited more than 40 years before Police properly responded to a statement he had given detailing his abuse at Lake Alice Hospital.[795] Similarly, Ann-Marie Shelley said it took 11 years, two complaints and a review before Police even laid charges against her abuser, despite his signed admission of guilt.[796]

Not all survivor experiences were negative. Keith Wiffin felt supported throughout the police investigation into his abuse, in contrast to the scepticism with which his allegations were met by the Ministry of Social Development.[797] Police also helped him arrange a restorative justice session with his abuser.

Even where Police choose to lay charges against an abuser, the court process is also often difficult for survivors. The survivor has no real role, other than as a witness in the case, and often there is little support available. In recent times, the Ministry of Justice has made efforts to improve the courtroom experience for survivors, particularly in relation to giving evidence. Stricter codes of conduct and regular training requirements now apply to judges and prosecutors involved in sexual violence cases.[798] Nonetheless, survivors still often find the courts an insensitive environment. One survivor described an upsetting experience where, giving evidence three days after having a baby, her new-born was mentioned in front of her abuser.[799] After the trial, she felt used and abandoned by the State again when they failed to provide any counselling or support.[800]

Taraipiunara Arotake i ngā Tikanga Tangata - Human Rights Review Tribunal

In some cases, survivors might be able to get some redress through the Human Rights Review Tribunal. The tribunal's scope is limited to claims relating to breaches of the Human Rights Act 1993 (including for example sexual harassment or discrimination), Privacy Act 2020 (including rights to personal records) and Health

and Disability Commissioner Act 1994 (including where there has been a breach of the Code of Health and Disability Services Consumers' Rights).[801] Survivors and advocates who have gone to the Human Rights Review Tribunal say it is chronically underfunded, resulting in delays that can stretch into years. Unlike the courts where survivors frequently lose cases on technical grounds, the tribunal must rule according to the substantial merits of a case, without regard to technicalities.[802]

Before making a claim to the tribunal, a claimant must lodge a complaint with the relevant body, either the Human Rights Commission, the Privacy Commissioner or the Health and Disability Commissioner. If the tribunal finds a claimant's rights have been interfered with or breached, it can order the defendant to make an apology, stop or correct the breach, provide training and pay compensation. The tribunal has awarded compensation in many cases brought before it, including relatively large amounts for emotional harm and lost earnings.[803] It uses bands as a rough guide to decide compensation for emotional harm. Depending on the facts of the case, claimants can receive up to $10,000 for less serious cases, $10,000 to $50,000 for more serious cases, and more than $50,000 for the most serious cases. It also regularly makes defendants pay the legal costs of successful plaintiffs.

The claim brought by IHC (an organisation that advocates for people with intellectual disability) against the Ministry of Education is an extreme example of the delays that can exist for those looking to the tribunal for a remedy. IHC claims that successive governments and the Ministry of Education have neglected the education of disabled children who need accommodations to learn. It has attempted to use the Human Rights Commission and Human Rights Review Tribunal to get orders that the Ministry take various actions to stop this neglect.[804] Its claim began in 2008 with a complaint to the Human Rights Commission, and was filed with the tribunal in September 2012. Yet it is only being heard by the tribunal this year – 13 years after the claim began. The Government opposed the claim in December 2014, and a hearing on preliminary matters took place in February 2015, but it was not until February 2021 that IHC heard that its claim would go to a full hearing on its substance. In her evidence to us, Trish Grant (the Director of Advocacy at IHC) described seeking a legal remedy by filing civil proceedings in the Human Rights Review Tribunal as having been "entirely ineffective".[805]

More generally, the tribunal's delays became so pronounced that in 2019 the Government appointed five deputy chairs to deal with the backlog of cases. Yet survivors say it can still take years to get a decision on even on small matters, such as striking out an application, typically followed by several more years before the substantive hearing and more again before a written decision. Survivor Jacinda Thompson waited four years for a substantive hearing on her sexual harassment

claim against her abuser and their employer, the Anglican Church.[806] Once she had finally had her hearing, it took more than a year for the tribunal to make its decision. She said it was

> *"emotionally exhausting being stuck in the justice system and I felt like my life was on hold".*[807]

The very public nature of the tribunal's hearing process – as well as its occasional side-tracks into personal matters – means that it can be a harrowing experience for individual plaintiffs.[808]

Free legal representation (outside of general legal aid support) is only available for a small number of cases, particularly those that could lead to change on issues experienced by others beyond the claimant themselves.[809] Even claimants pursuing important cases of this sort can find their free representation suddenly withdrawn because of a lack of resources.[810] Claimants who simply want redress and whose cases involve no issues of wider significance are unlikely to receive any funding other than if they are eligible for legal aid.

The tribunal, then, may not be a viable option for many survivors, despite its advantages of offering open justice and allowing mediation processes to continue alongside tribunal cases.[811]

Te Tari o te Kaitiaki Mana Tangata - Office of the Ombudsman

Anyone can ask the Office of the Ombudsman to look into decisions made by government agencies, as well as public sector agencies like district health boards and school boards. Survivors have gone to the Ombudsman about delays or improper decision-making by government agencies on matters of administration. They have also asked the Ombudsman to investigate the length of time government agencies have taken to respond to Official Information Act requests or to examine excessive redactions of material released under these requests. Proposed legislation gives the Ombudsman an enhanced oversight function for decision-making by Oranga Tamariki and an early roll-out of this function has been initiated. The Ombudsman's powers are mostly limited to making recommendations and the government is not obliged to act on these recommendations. In one such example, sisters Tanya and Georgina Sammons went to the Ombudsman over the Ministry of Social Development's refusal to consider the redress claim of their deceased sister Alva. The Ombudsman said the ministry should accept and investigate their sister's claim, but the ministry did not follow this recommendation.[812]

The Ombudsman's complaints process has taken a long time for some survivors. Survivor Peter Boock asked for a review in 2018 of a decision by Saint Bede's College in Christchurch to refuse to release documentation about his abuse. The Office of the

Ombudsman had to consult with the Privacy Commissioner, and it took over a year for Peter to receive notice that the office would conduct an investigation.[813] Cooper Legal waited for over three years to receive a substantive response on the Ministry of Social Development's redaction of information and names in survivors' records.[814] It took more than two years for the Sammons sisters to get a final response to a 2014 claim concerning the Ministry of Social Development's approach to Alva's claim.[815] The Office of the Ombudsman told us that a backlog of files was cleared around 2016/17 after it received additional resourcing and other reforms have been made so that delays are no longer an issue. Recommendations of the Ombudsman are not enforceable, even when it forms an opinion that a decision was improper. Survivors have to rely on the willingness of government agencies for any remedy.

Te Rōpū Whakamana i te Tiriti o Waitangi - Waitangi Tribunal

The Waitangi Tribunal is a standing commission of inquiry that is available to Māori to make claims relating to a breach of te Tiriti o Waitangi by the Crown. The tribunal's scope to consider claims is restricted. It cannot decide on a claim if the claimants in all circumstances have an adequate remedy, right of appeal or avenue available to them. The tribunal also no longer has jurisdiction to inquire into any new claim concerning matters that occurred before 21 September 1992. For this reason, Māori survivors of abuse prior to that date are no longer able to bring claims relating to their abuse in care.

Survivors have used this avenue to make claims about redress processes. In 2017, a group of Māori survivors made an application for an urgent inquiry into the Crown's settlement of historical grievances about Māori children abused in State care. However, in 2019, the tribunal declined to hear the claim urgently on the basis that an inquiry would be an inefficient use of their resources given the Government's establishment of this inquiry.[816] The tribunal said that claims could be heard as part of a future kaupapa inquiry. No date has been provided for when this might occur.

Crucially, the tribunal is unable to provide remedies itself. With a limited exception, the tribunal can only make non-binding recommendations to the Crown on ways to compensate those affected, remove the prejudice or prevent others from being affected in the future.[817]

Kāhui mātanga whakatika - Professional disciplinary bodies

Survivors can make a complaint about a perpetrator to the disciplinary arm of the professional body to which the perpetrator is a member – typically the Teaching Council of Aotearoa New Zealand or the Medical Council of New Zealand. Professional disciplinary bodies may be relevant to harm caused by others too – for example a complaint could be made to the New Zealand Law Society about a lawyer who

breached professional standards in the way they dealt with a survivor. These bodies can have individuals suspended or banned for breach of professional standards. This may prevent any continuation of abuse. However, making a complaint about a perpetrator can be personally distressing and traumatic. One person told us of a survivor being subjected to a harrowing two-hour cross-examination by their abuser, who was representing themselves.[818]

Tari o Kaikōmihana Toihau Hauora, Hauātanga
Office of the Health and Disability Commissioner

The Office of the Health and Disability Commissioner is an independent watchdog and is another avenue for survivors to seek redress. Complaints must relate to failings in the quality of health and disability services. This limited jurisdiction means it can only look into some abuse in care complaints. The Code of Health and Disability Services Consumers' Rights, which gives the Commissioner much of their jurisdiction, only applies to events after 1 July 1996, excluding many historic claims. Even for serious complaints that come under the Commissioner's jurisdiction, the Commissioner can choose not to pursue them. For instance, the Commissioner chose not to take any specific action in response to a survivor's complaint against health practitioners at Lake Alice Hospital between 1973 and 1975 due to previous inquiries on the matter.

If the Commissioner finds there has been a breach of the code, they can make recommendations in response. Recommendations can include requiring a health provider to make an apology, undertake further training, revise policies or carry out audits. The case can also be referred to the Director of Proceedings, who can take a case to the Human Rights Review Tribunal seeking remedies including financial compensation, or referred to the appropriate body to consider a disciplinary prosecution. Simple complaints to the Commissioner are typically dealt with relatively quickly, while more complex cases may take around two years.

Tari Kaikōmihana Tamariki - Office of the Children's Commissioner

The Office of the Children's Commissioner is an independent body that monitors and reports on services provided to children in care. The office's mandate covers only contemporary, not historic, care settings and it is unable to provide survivors with monetary payments or non-monetary redress. However, through its monitoring services, the office can contribute to one aspect of redress: preventing the reoccurrence of abuse. The office has three areas of monitoring: a statutory responsibility to "monitor and assess" the policies and practices provided under the Oranga Tamariki Act 1989; as a designated "National Preventative Mechanism" under

the Crimes of Torture Amendment Act 2003 and having responsibilities for children and young people in detention under the Optional Protocol to the United Nations Convention Against Cruel, Inhuman or Degrading Treatment or Punishment; and overseeing the grievance panel system, Whāia te Māramatanga, used within the nine youth justice and care and protection residences to allow those in these residences to make complaints about their treatment.[819]

As the principal monitor of the Oranga Tamariki system, and through its other monitoring roles, the office is an expert on State monitoring and working with care-experienced young people. This inquiry has received three submissions from the Office of the Children's Commissioner. The office told us that the full scope of its monitoring functions have been limited by a persistent lack of adequate funding and that this has impacted and restricted its ability to effectively monitor the system.[820] Despite this, it has always focused on care and protection and youth justice residences given that young people in these residences are particularly vulnerable.[821] Oranga Tamariki has no obligation to respond to the office's recommendations and its monitoring reports are confidential.

2.7 Whaiwāhitanga ki ngā pārongo
Access to records

Whakatakinga - Introduction

Requesting records is usually the first action survivors or their legal representatives take when making a claim.
For some survivors, access to records may be the only redress they want.

"I distinctly remember the day sitting ... by myself looking at those records and just how confronting that was. It was a very lonely, painful experience reading those records by myself. Records are a very big part of our lives obviously. It's the first time that you sit down there and read them and you're reading about your life. And sometimes that can take a long, long time to come about. That is because, in part, in great part, the authorities do not make it easy for you."[822]

Keith Wiffin, said records "form[ed] a very important part of redress".[823] Advocacy group CLAN NZ said records were "of the utmost importance" for survivors, observing that "being able to access their personal files and records usually represents their only hope in finding answers to the many questions that they have carried with them for a lifetime".[824]

Survivors described a variety of obstacles to getting hold of their records. No information was publicly available about where to go and who to ask for records. Organisations offered very limited guidance, advice or support during their searches. Records were spread across numerous agencies, some of which had ceased to exist. Institutions held different types of records in different locations. Institutions were themselves sometimes unable to find information.

Some institutions took unreasonable lengths of time to hand over information and conducted their own searches of records and decided what to release, creating a power imbalance in their favour. They misplaced – and sometimes destroyed – records as part of poor record management processes. Other records were legally destroyed consistently with policy. Many disabled survivors are unable to access their records, contributing to feelings of invisibility.

Organisations may even have hidden or destroyed records to hide evidence of abuse – a suspicion that, although often unproven, led to distrust of government

agencies and faith-based institutions among those survivors whose records arrived incomplete or not at all. Some records were damaged or lost through flooding or fire. Records turned up with large sections redacted or blacked out. Information could be conflicting, offensive, missing or inaccurate. Names were misspelled and dates of birth were wrong.

All these barriers are stressful for survivors, and many are traumatic. The barriers are particularly difficult for survivors in prison, those unable to read, those with limited access to community support services, or survivors with a disability. A survivor described her first impression after opening her records as "horrific":

> *"I mean, I opened it up and I read probably about six pages and I thought to myself: 'This is bull.' I became so angry, I sealed them back up again."*[825]

The barriers to accessing records can affect survivors' ability to heal. Limited records can affect their ability to make a claim for redress, but it can also bar survivors from understanding their own experiences and understanding the tūkino, or abuse, harm and trauma,) they experienced.

> *"The records I have received through my OIA request are very valuable to me because they give me a place to start when trying to understand what happened in my childhood and where I have been. Other children have photos … all I have is my records."*[826]

Whaiwāhitanga ki ngā pārongo me te hono anō ki te whakapapa me te ahurea
Access to records and connection with whakapapa and culture

Opportunities to connect or reconnect to whakapapa and culture is an important element of redress processes for many survivors and access to accurate records facilitates this process. Personal records can help survivors understand their experience more fully and connect or reconnect with their whakapapa, whānau and sense of identity.

Access to records can logically facilitate connection to whakapapa. We will say more in relation to this in our report on Māori experiences of abuse in care. Our report on Pacific experiences will also be looking at accessing records as an element of cultural restoration.

Umanga Karauna - State agencies

Haurakiraki ana te mau pārongo - Record-keeping not consistent

Record-keeping is a matter for each agency, so an individual's records may be scattered among different institutions, agencies and district health boards if a survivor had many placements. Archives New Zealand holds some older files, but the State has no centralised repository of records for those who have been in its care (nor is there any uniform digitising of records).[827] Each government agency has its own file management system. Some health records are held by individual district health boards, and school records, where they exist, are held by individual schools.

No independent service exists to help claimants gain access to, or understand, their records. At present, survivors or their legal representatives must contact relevant agencies individually and directly. Each agency has its own process for dealing with requests for records. The agencies most commonly approached are the Ministry for Social Development (which has a dedicated historic claims unit), Ministry of Education, Oranga Tamariki and Ministry of Health.

Agencies have sometimes moved some of their records to other agencies, – which has made record searches more complex and uncertain. For example, law firm Cooper Legal told us that since some of the Ministry of Social Development's records were transferred to Oranga Tamariki, it has been difficult to work out who holds particular records:

> *"When you do an Official Information Act [request] the [the ministry], part of it will get sent to Oranga Tamariki, some might stay with [the ministry]. It's really unclear who actually has records now, even historic ones. And we've been in meetings with both [the ministry] and Oranga Tamariki where they say: 'Yeah, we're not really sure who's got control over things.' That worries me greatly about who has control of information."*[828]

Survivor James Packer, who is Deaf and has Asperger's syndrome, said neither the ministry nor Kelston School for the Deaf was able to give him a copy of any relevant records about his time at the school:

> *"They could not even work out among themselves who held my original personal files ... This made the redress process stressful and frustrating, as I could not be precise about when things happened."*[829]

The Confidential Listening and Assistance Service, set up in 2008 to hear from survivors, found that many survivors did not even know that the agencies that had held sway over their lives, kept records of their time in care and they could ask for

them.[830] Many survivors were frequently moved between institutions and struggled to accurately remember dates and locations from their childhood.

He takaroa te wā whiwhi pārongo - Lengthy waits for records

Survivors said they had to put up with long delays in obtaining their records. Some claimants waited more than a year. Hone Tipene experienced a two-year period of missing records that have delayed his claim. There is no record of him attending Hato Petera College at all, so he cannot seek redress.[831] David Crichton was frustrated with the time it took to receive information about his own life: "There have been delays and extensions sought by organisations and some places replied that they just hold no information about me. Permission had to be received for some documents to be shown to me. That is unfair. This is my life. Everyone else knows my life except me."[832]

The Ministry for Social Development was a particular problem because, as Dr Stephen Winter, a senior lecturer at the University of Auckland, noted, its historic claims unit "has never kept pace with incoming claims".[833] Cooper Legal made repeated complaints to the Ombudsman and the Privacy Commissioner about delays by the ministry, and in March 2015 filed a group claim with the Human Rights Review Tribunal on behalf of 63 clients experiencing lengthy delays. The claim resulted in settlement offers being made to Cooper Legal's clients. Cooper Legal said the ministry's performance improved substantially afterwards, but this took several years.[834] Cooper Legal has seen that the time taken to provide records has recently increased once more and the ministry's Privacy and Official Information team is four months behind schedule.[835]

The ministry told us that finding, collating, checking, copying and forwarding on records was a time-consuming job, many files were large – some more than 1,000 pages – and this made a big job even bigger.[836] Paper-based files could be "old and fragile" and had to be carefully scanned page by page.[837] It said the large number of requests for records had resulted in long delays, but it had since improved its processes.[838]

Kua ngaro, kāore anō kia mutu, he rerekē rānei ngā pārongo i ōna wā Records often missing, incomplete or inaccurate

For a variety of reasons, including past record-keeping practices, records sometimes couldn't be found or contained missing or inaccurate information. One survivor described his difficulty in getting records from a district health board because medical staff had misspelt his name and recorded his date of birth wrongly when he was a child.[839] Before the Public Records Act 2005 came into effect, the public sector was not explicitly required to create and maintain full and accurate records. The survivor "M" found that institutions formerly had a very "casual" approach to

record-keeping, never imagining anyone might want to see their own records, and this accounted for a lot of his missing information.[840]

James Packer said he found the lack of records one of the most difficult and stressful parts of the claims process because it complicated the task of bringing together the necessary details to put forward a claim. He said a lack of accurate records undermined the very system of redress.[841]

For Māori survivors, missing, incomplete or inaccurate records has not only delayed or restricted access to redress but for some, where their ethnicity was incorrectly recorded, have felt a complete disconnection from their whakapapa. Doctors and social workers falsely listed Ms AF's ethnicity as European on her records because Māori babies were less desirable for adoption. "In doing so, they stole my whakapapa and my whenua from me and my descendants."[842]

We heard that Māori in psychiatric care experienced additional abuse when their records did not reflect their culture: "In the hospital notes they wrote about me: 'Patient in room staring blankly against wall and was muttering incomprehensible word salad and gibberish, and was asked to keep quiet'. But I was saying a karakia to myself to calm down and seek protection and safety. Their method of asking me to keep quiet was to come into my room, grab me by my long hair, pull my head back and scream in my face, 'shut up nigger."[843]

It was not uncommon to find erroneous and hurtful information, including derogatory language about survivors and their whānau, in records. Several survivors described their dismay at the way their behaviour, shaped by an abusive institution, was told. One survivor, Mr X, said he was "disgusted" at reading how he had been labelled a bully:

> *"They've made us do this and now they're writing saying that I'm a bully, I was never a bully … when I read these files it's just another path of abuse to us survivors because it's lies, it's bullshit."*[844]

A Samoan survivor, Mr CE, had his ethnicity wrongly recorded as part Māori. He described this as "another kick in the face because it shows me that how they did not care about me to get my information right."[845] Wrongly identifying ethnicity is a widespread issue and can have deep effects on survivor identity.

Whānau of disabled people who died in institutions often want more information about their loved one. Records can assist whānau looking for answers, but records are often unable to be found. One family member of a survivor wanted to know how and when his relative had died, but was unable to obtain his death certificate, meaning he could not find the answers he needed.[846] Another family member felt he was "put

through the ringer" when requesting information about his brother who had died in State care, and he hasn't been able to get answers.[847] He said he needed his brother's documents "to help me rest", and to help restore his brother's mana.[848]

Documentation of incidents of abuse was rare. From the testimony of survivors, we know that children in care often did not report abuse because they soon learned staff would take no action, and indeed might take punish them for speaking up. Institutions themselves had little incentive to keep records of events that reflected badly on them.[849] Information about abuse might have been kept in separate files or put in staff records rather than on survivor files.[850] Staff records were often kept only as long as individuals worked at an institution or were kept for only seven years. The Ministry of Social Development destroyed many staff records in 1999.[851]

Some witnesses and submitters suggested records had been deliberately destroyed or withheld. Cooper Legal, in referring to records of abuse, said "a lot of that material just seems to have disappeared".[852]

Linda Hrstich-Meyer, general manager of the ministry's historic claims unit, said the fact records could not be found did not mean they had been destroyed. Other failings can lead to records being unable to be found. Records have been misnamed or mislabelled, leaving them virtually undiscoverable, and lost or damaged records can be incorrectly recorded as destroyed.[853] Ms Hrstich-Meyer told us that "in some rare instances, for some records, unauthorised and unrecorded destruction may have occurred", but there was nothing to suggest anyone might have deliberately destroyed files for the purpose of defeating a claim.[854]

Kua mukua ētahi wāhi o ngā konae - Files often have blacked-out sections

Agencies sometimes blacked out, or redacted, part or all of hundreds of pages of a survivor's file, hiding details about family members or photos of school classmates that might have helped the claimant remember and understand their time in institutions.

Māori survivors seeking information about their whānau, hapū and iwi particularly have felt the impact of these redactions, which have prevented them from connecting or reconnecting with their whakapapa, and contributed to their social isolation.[855] The removal of this information has fuelled survivors' suspicions and distrust about agencies' motives and sincerity.

However, agencies must comply with the requirements of the Privacy Act 2020. The Act entitles survivors to personal information about themselves, but not information that would lead to "unwarranted disclosure" of information about other individuals.[856] Nonetheless, many survivors expressed concerns about the amount of material

redacted in personal files. Survivors and sisters Tanya and Georgina Sammons said their files contained so many blacked-out sections it was difficult to make sense of them:

> *"For example, in one 90-page file, 45 of the pages were completely blanked out … This made it really hard to go through, and like me, Tanya was left wondering what was on those pages, and how the whole page can need to be redacted."*[857]

One purpose of the Confidential Listening and Assistance Service was to help survivors make corrections to information the State held about them, but this proved impossible. Files arrived with so many redactions that the Service could not begin to correct any errors.[858] Another consequence was that survivors and their advocates struggled to interpret information in their records, which affected their ability to make a claim. Individual government agencies take different approaches to redacting information. The Ministry of Health said it provided records without redactions except where it had health and safety concerns about the contents.[859]

The Ministry of Social Development, on the other hand, heavily redacted files, according to Cooper Legal – which has had considerable experience in trying to obtain files from the ministry. It said the ministry "took a narrow view of what was relevant and removed material which was rightfully accessible by a claimant".[860] Cooper Legal made a complaint to the Office of the Privacy Commissioner about inconsistent and unnecessary redactions by the Ministry of Social Development in 2012, which was upheld.[861] Cooper Legal also engaged with the Ombudsman's Office over redactions. While the Ombudsman found that the ministry had unnecessarily redacted some information in one survivor's case, Cooper Legal gave evidence that there had not been substantial improvements.[862]

Cooper Legal said redactions were "a real impediment to us and survivors understanding what their history is, what the State knew, which at the end of the day is the most important part of this".[863] It said the back-and-forth process to get unredacted records greatly delayed its work:

> *"At the moment they are giving us … documents that we say they wrongly redacted back in 2016 and 17, and it will take, you know, three or four years to get those documents sent back to us again."*[864]

Redactions have also been applied inconsistently by the Ministry of Social Development. Frankie Vegas requested her records from different homes over the years and said: "Whenever I received the same set of notes more than once, they were so different. The redactions would vary each time and sometimes pages I had received in response to earlier requests were missing completely."[865]

Oranga Tamariki has also provided heavily redacted records, taking a similar approach to the Ministry of Social Development. Steven Groom, general manager of public ministerial and executive services at Oranga Tamariki, said making decisions about what material to redact was a challenge, in large measure because of the volume of material. The size of individual files and the cumulative workload of this volume of material (about five million pages a year) added to the agency's difficulties.[866]

Mr Groom gave evidence that staff found it difficult to ensure that Oranga Tamariki was only releasing information that claimants should have access to under the Privacy Act, when files invariably involve complicated family relationships.[867] It is important that claimants are not given information on other family members without their consent. However, this can lead to survivors struggling to understand records that are heavily redacted.

> *"I understand that people's privacy needs respecting. But then also when it's about you, why can they know and not you?"*[868]

Me uaua ka whai tautoko ngā purapura ora i te wā o te pānui konae
Little support for survivors in reading their files

Government agencies' files can be difficult to interpret at the best of times because of their size, format and bureaucratic language. It is even more difficult for survivors with cognitive problems, learning disability or poor literacy skills.

To compound matters, files often arrive out of chronological order. Survivor Earl White said he found it a distressing and very difficult exercise to spend hours going through his files trying "get them in the right order to make sense of what had happened".[869] The Ministry of Social Development said it had looked into fixing this problem but maintained that it had to release files in the form in which it held them.[870]

Disabled survivors are more likely to need assistance with interpreting their records. Survivors have told us that reading their files without assistance is very difficult. Contributing to this, some disabled people have been in care settings for the majority of their lives, leading to very long and complicated records.

In addition to help with negotiating their way through the redactions, obscure language and other impediments in their files, survivors also need emotional support and counselling.

Personal files can contain confronting information about survivors, their parents or their abuse. Earl White said he was "shocked to see exactly what [the ministry] had known about the abuse, and the comments they had made".[871] Maureen Taru said she discovered in her files that she had been given a powerful sedative called paraldehyde without her knowledge:

"I just couldn't believe it because that's a nasty drug. As soon as I saw that name, I said to the lady who was with me: 'I know that drug, it's a nasty drug. Why would they want to give me that?'"[872]

Survivors told us that support to access and read their records was limited. There are few organisations with specialist expertise in supporting survivors to access their records. The Confidential Listening and Assistance Service arranged counselling and support for survivors in reading their files, but the service was wound up in 2015.

The Ministry of Social Development's historic claims unit will answer claimants' questions about the contents of their files and will link them up to a counsellor when they read the files. Oranga Tamariki will also offer to talk through records with survivors and arrange for a social worker or support person to be present if it considers that an individual is likely to find records particularly upsetting. Many survivors, however, are wary of having anything to do with State agencies because of their role in their abuse. The Ministry of Education told us it has offered help to claimants with literacy issues to read through their records. The Ministry of Health does not offer any support to survivors accessing their records.

Finally, some advocates, such as CLAN NZ, found the way agencies handed over records to be "insensitive" and "disrespectful", in large part because agencies considered the records to be theirs, rather than belonging to survivors.[873]

He roa ngā hātepe amuamu - Complaints processes lengthy

Survivors can take complaints about access to records to the Privacy Commissioner and the Ombudsman. However, Cooper Legal said it had gone to both and experienced lengthy delays because neither had the resources to deal with complaints of the complexity – or volume – generated by survivors of abuse.[874]

Wāhi whakapono - Faith-based institutions

Horokukū ana ngā wāhi ki te tuku pārongo, nā konā i takaroa ai
Institutions have been reluctant to provide records, which has led to delays

In general, survivors found it more difficult to gain access to files held by faith-based institutions than those held by State agencies. Many described a general lack of accountability and openness on the part of faith-based institutions about what records they had kept and would release. They said these institutions kept very minimal records and destroyed those they did hold for various reasons. They were also reluctant to hand over records. One survivor, who wanted to be known only as John, said the Marist Brothers refused to give him a copy of the file opened by the investigator that was investigating his report of abuse, saying it was "the property of the Marist Brothers".[875]

Although The Salvation Army can now provide survivor records in a short period of time, some survivors that went through their process in the early 2000s struggled to obtain their records. One survivor, Janet Lowe, initially requested her file from The Salvation Army in 1983 but was refused, receiving records only some time after making a formal claim in 2001.[876]

Frances Tagaloa believes that information was withheld from her by the Marist Brothers when she first requested her records. She also told us that Brother Peter Horide used the Privacy Act as a reason to withhold certain documents when he could have provided the document and redacted confidential information.[877] Frances also told us that there were delays getting her records. She requested the records in March 2020, and was given them in September and October 2020. In July 2020, the Marist Brothers had decided to "confine [their] answer" after receiving legal advice about Frances' request.[878]

Kua ngaro ngā pārongo, kua turakina rānei
Records frequently missing and even deliberately destroyed

Survivors told us faith-based institutions had lost or destroyed their records. At times, this has been used to deliberately cover up abuse. There have also been instances where records have been destroyed by fire or earthquakes or damaged by water, the cause of which is often unknown.

The Anglican Church has made it difficult for survivors to obtain records relating to their time in care. Survivor records have often been lost, destroyed or not recorded properly in the first place. Tamzin Ford told us that the church had informed her that relevant documents relating to her complaint and how the church dealt with her abuser do not exist. She said: "the church knew exactly what was going on and … they covered it all up."[879]

There is one reported instance where it was noted that records of a meeting in 1974 between The Salvation Army leadership and John Gainsford, later a convicted child abuser, were missing.[880] On a second occasion, an independent investigator reported that a complainant had said that certain records may have been removed, but it was never confirmed.[881]

Tina Cleary gave evidence for her father Patrick Cleary, abused at St Patrick's Silverstream, which was a Catholic school run by the Society of Mary. Patrick found it difficult to tell anyone about the abuse, due to "shame for everything, even for being me". He wrote: "I complained twice to the Society of Mary, the outfit which controls the priests". However, the Society of Mary says its records show he complained once only. Patrick wanted photos of his abusers to be taken down.[882]

Representatives of these institutions acknowledged there had been shortcomings in the collecting, handling and disposal of records. Colonel Gerald Walker from The Salvation Army said he accepted there had been "gaps" in its documentation, but didn't know how some of these had happened, noting that current retention policies did not exist earlier.[883]

We heard about the deliberate burning of records by an Anglican bishop, Allan Pyatt. Bishop Peter Carrell of the Anglican Church said he could not say what records Allan Pyatt, had burned during his time and whether this was common practice:

> *"I have no idea personally whether Bishop Pyatt's predecessors had a similar kind of bonfire approach … I've looked at the lot of the files going back to the 1940s and onwards, so it's not a case that every record has been removed, but it is quite possible that a bishop … may have looked at, for example, some correspondence and said: 'Well, you know, I should get rid of that.' … Of course, I have no idea what Bishop Pyatt actually burned."*[884]

Faith-based institutions, like many public and private institutions, have had policies on the destruction of records after a certain amount of time, which means records will not exist forever. These policies can be another barrier for survivors accessing their records.

Ruarua noa iho ngā pārongo i puritia - Minimal records kept

From what survivors and representatives of faith-based institutions have told us, in some cases there appears to have been minimal record-keeping. Murray Houston said that The Salvation Army had located a record for a survivor in almost every case. In some cases, these files were substantive, but that "regretfully in some situations, particularly a lot of the earlier records are possibly just a single entry in and out, and a date of birth maybe".[885] Bishop Bay of the Anglican Church, said "very little" was recorded and "any records that were kept, especially from longer ago, were very scant".[886]

Senior members of the Catholic Church have also conceded that historically record keeping has been poor. A preliminary report undertaken by the church said that "prior to 1990 almost no records of abuse are held".[887]

Ms B told the faith-based redress hearing she was outraged to discover that The Salvation Army could produce just "one sheet [of paper]" to account for the early years of her life, and that a government agency "would have been strung up" for presenting such a paltry record of an individual's time in its care.[888]

Survivor Neil Harding said the fact perpetrators of abuse were often moved along, rather than held to account for their actions, meant institutions' records would inevitably be "inadequate and inaccurate" because of the need to hide the original deception – the unjustifiable transfer of perpetrators.[889] He said the school also failed to record the names and experiences of other abused boys.[890]

Poor record keeping hid what was happening to children in care. Gloria White said The Salvation Army and the State had both failed her by giving her inadequate support when she came forward with her experiences of abuse while she was in care, and that if the girls' home and school she attended "had made true records of my behaviour and my movements, they would have seen [the] pattern that was happening".[891]

Some faith-based institutions have tried to improve their record-keeping practices. The Salvation Army, for example, adopted revised practices in the 2000s, including digitisation, and the Anglican and Catholic churches have employed archivists and historians to help upgrade their filing systems.

Nā te koretake o te pupuri pārongo i rerekē ai ngā kerēme mō te puretumu
Poor record keeping affected claims for redress

Numerous survivors told us that when they obtained their records, they discovered their claims of abuse were either nowhere to be found or were recorded incompletely or inaccurately. As a result, they could not put together sufficient supporting information to make a strong claim for redress.

Janet Lowe was told by The Salvation Army's lawyers in 2001 that there was nothing in The Salvation Army's records to indicate problems with her care, and that her claim was unlikely to succeed.[892] However, she told us about concerns raised by her father with The Salvation Army about her care that had been recorded in her Department of Social Welfare file, but not in her Salvation Army file. The Salvation Army's lawyers also said in a letter to Janet that if she gave up her claim the Army would meet its own costs (with the implication that if she continued her claim the Army would seek costs from her).[893] Murray Houston later acknowledged at the faith-based redress hearing that this letter was unacceptable.[894]

One survivor made a claim with the Anglican Trust for Women and Children. She told us that "the lack of records about me made [my claim] very hard. I don't understand how I could stay at Brett Home and with Mr and Mrs S for so long, without any records being kept."[895]

While institutions have maintained that record-keeping has improved, we heard that redress reports of abuse were recorded incorrectly. Frances Tagaloa said it was "despicable" that "just four pieces of paper" had been necessary to write up an allegation as serious as sexual abuse, and that the matter was deemed "not

important enough to document [precisely]".[896] Another survivor said he discovered during its redress process that initially the relevant diocese had not treated this allegation as a report of abuse, but had simply made a note in the diocesan records. "I was very upset to hear this."[897]

We also heard that institutions have failed to accurately record data on the ethnicities and disability of survivors who access their redress processes. Both Murray Houston, from The Salvation Army, and Brother Peter Horide, conceded that because such data had not been formally captured, in order to assess ethnicities for the purposes of preparing for and assisting the inquiry, they estimated claimant ethnicities, and have recorded these opinions.[898] This approach is unreliable and problematic. Appropriate recordkeeping practices are critical for identifying, preventing and responding to abuse.

I takahia te tapu tūmataiti - Confidentiality breached

Some survivors said churches had shared their records with psychologists and others without their consent and in circumstance where the record sharing was not required by law. Records can be incredibly meaningful to survivors and can include personal details about their life and abuse. It is distressing for survivors to not know who has access to their information.

Ann-Marie Shelley, who experienced abuse in the Catholic Church, said her records revealed that her complaint "had been shared with several psychologists contracted to the Wellington Archdiocese to give advice to the Cardinal on how he should handle me".[899] Before this, Ann-Marie had specifically asked that her information was not to be shared with others without her express permission.[900]

Another survivor, John, said the Marist Brothers "controlled who'd seen my file, [and] what information they provided to that person sitting around the table with them".[901] He also said: "I don't like the fact that I don't know who else is looking at my case, that I don't know them, that I don't know if they've been shown everything, so they can understand my pain."[902]

These did not appear to be isolated incidents, as Ms K states:

> *"What I did not realise at the time was that my counsellor was reporting back to [the Catholic Church's Professional Standards group in Australia] about my progress and was acting as a conduit for the Marist Brothers in New Zealand. The counsellor was passing back progress reports about my mental state while the Order was making use of the counsellor to provide information to me about the progression of the investigation. In my opinion, professional boundaries were crossed."*[903]

WĀHANGA TUATORU

PART THREE

Ngā tūtohitanga Recommendations

KUPU TAKAMUA - PREFACE

Current redress processes are unquestionably failing to produce fair, consistent or adequate outcomes for survivors and their whānau affected by tūkino, or abuse, harm or trauma in care. They are not designed in conjunction with survivors and affected communities or guided by any consistently applied principles, they fail to meet the needs of survivors, and they do nothing to prevent further abuse.

In this final part of the report, we outline a series of recommendations that, if implemented, will establish what will eventually be a new scheme to provide puretumu torowhānui, or holistic redress for survivors of abuse in the care of State agencies, agencies providing care on the State's behalf (which we refer to as indirect State care), and faith-based institutions.[904] This puretumu torowhānui scheme will aim to restore the power, dignity and standing of those affected by abuse in care, without them having to go to court, as well as take effective steps to prevent abuse. It will fit within what we refer to as the "puretumu torowhānui system", which is the wider system of services, organisations (including the courts), laws, and policies that have a role in providing different types of puretumu torowhānui and preventing or responding to tūkino in care.

The changes we recommend to bring about the puretumu torowhānui system and puretumu torowhānui scheme can be summarised as:

- expansion of oranga, or wellbeing, services and support services for survivors and their whānau
- increased financial payments for survivors
- training for those working with survivors
- establishment of a listening service
- development of processes for referring allegations of abuse to other agencies
- better monitoring of, and reporting on, abuse and systemic issues
- memorials and other projects to honour survivors and remember abuse

- enactment of a right to be free from abuse in care, as well as a duty to protect this right
- an exception to accident compensation legislation
- changes to laws relating to civil litigation
- a review of legal aid rates
- a model litigant policy for the Crown
- improvements to the handling of survivors' requests for records, including as few redactions of survivors' records as possible
- a review of record-creation and record-keeping practices.

Importantly, we also recommend that there be public acknowledgement of, and apologies for, the tūkino, or abuse, harm and trauma, that occurred and the impact it had.

The puretumu torowhānui system, including the scheme, will be based on a series of te ao Māori, Pacific and human rights principles, values and concepts, and will underpin and co-ordinate the work of various agencies and provide a range of services to survivors, their whānau and others. This system will put the needs of survivors and their whānau first and foremost.

We first set out below the main purposes of the puretumu torowhānui system we propose and key requirements for its design and operation: that it give effect to te Tiriti o Waitangi, is consistent with international law, and that it is underpinned by a set of principles, values and concepts that we outline. We also set out the ways we propose Māori, survivors, the Crown, and faith-based institutions will build on our work and create the puretumu torowhānui system and the puretumu torowhānui scheme. We then focus on our recommendations for the substance of the puretumu torowhānui system and scheme, starting with public apologies, and then setting out the principal characteristics of the scheme, how the scheme will operate, and what it will offer survivors. Following that, we make recommendations on wider aspects of the system, including on memorials, civil litigation, monitoring and records. In later reports we will expand on these recommendations and consider other aspects of the system.

WHAKATŪNGA O TĒTAHI PŪNAHA PURETUMU TOROWHĀNUI
ESTABLISHMENT OF A PURETUMU TOROWHĀNUI SYSTEM

Ngā aronga o te pūnaha - Purposes of system

Our first recommendation proposes the establishment of a puretumu torowhānui system to address tūkino, or abuse, harm and trauma. The system should have three primary purposes: to apologise for the tūkino suffered by survivors, to heal or restore the mana, tapu and mauri of people, and to take steps towards preventing abuse.

He tūtohitanga - Recommendations

1. The Crown should establish a puretumu torowhānui 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, hapū, iwi, and hapori or communities
   - aims to heal and restore individuals' mana, tapu and mauri
   - takes decisive and effective steps to prevent further abuse.

Whakamana i te Tiriti o Waitangi
Giving effect to te Tiriti o Waitangi

There should be an explicit requirement that the puretumu torowhānui system itself, and those designing and operating it, give effect to te Tiriti o Waitangi and its principles. We consider this strongly worded obligation is appropriate given the disproportionate number of Māori in State care and affected by abuse. Our work has uncovered the many ways in which the obligations of te Tiriti have been ignored or not fulfilled by those responsible for the care of children, young people and vulnerable adults. The general requirement to give effect to te Tiriti in addressing matters relating to abuse in care should be specifically included in legislation and policy including the legislation establishing the puretumu torowhānui scheme.

He tūtohitanga - Recommendations

2. The puretumu torowhānui system, and those designing and operating it, should give effect to te Tiriti o Waitangi and its principles and, in particular, to the right to tino rangatiratanga, or self-determination and authority, which includes the right to organise and live as Māori and to make decisions to advance the oranga of survivors through the provision of care to whānau, hapū and iwi by whānau, hapū and iwi. The requirement to give effect to te Tiriti should be expressly stated in any legislation and policy relating to abuse in care.

Hāngaitanga ki ngā ture o te ao
Consistency with international law

The puretumu torowhānui system should be consistent with the commitments Aotearoa New Zealand has under international human rights law. These commitments are summarised in part 1.4. They include that effective redress must be available for human rights violations, and that this may include compensation, rehabilitation, public apologies, memorials, law and policy changes as appropriate, and accountability for perpetrators.

He tūtohitanga - Recommendations

3. The puretumu torowhānui system should be consistent with the commitments Aotearoa New Zealand has under international human rights law, including the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of Persons with Disabilities.

Ngā mātāpono, uara me ngā kaupapa
Founding principles, values and concepts

We consider the following principles, values and concepts should guide the design and functioning of the new puretumu torowhānui system. We have been primarily guided by tikanga Māori concepts because we see such an approach as necessary to give effect to te Tiriti o Waitangi and because Māori have been disproportionately affected by abuse in care. In addition, we consider these principles, values and concepts capture ideas that we have heard from many survivors and will resonate with more broadly. The Pacific principle of teu le vā / tauhi vā has been included too. Pacific peoples are also disproportionately affected by abuse in care, and achieving utua kia ea, or restoration and balance, needs to be done in culturally appropriate ways and this unique concept was not quite captured in the other tikanga Māori concepts. We have also given particular consideration to the importance of valuing

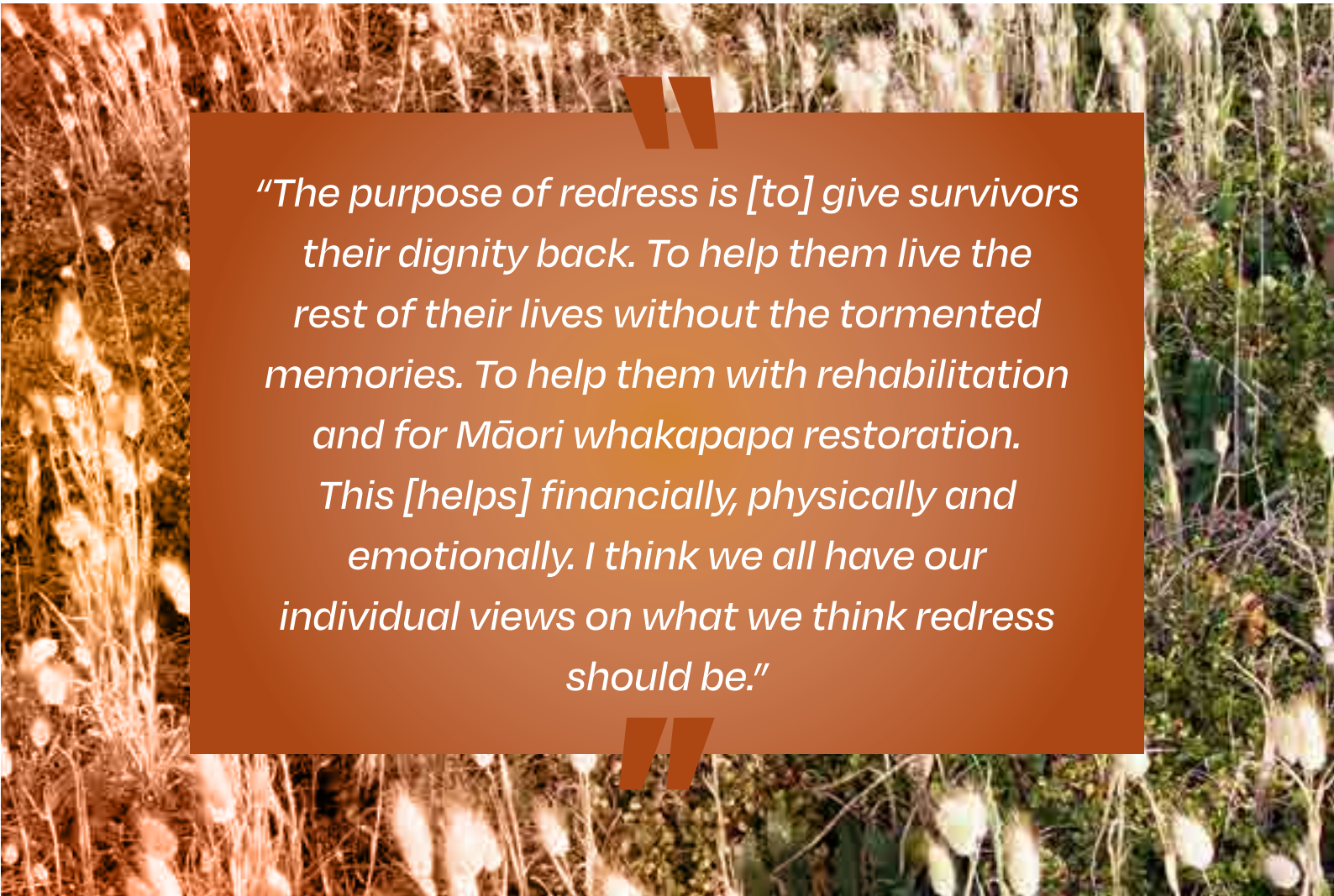
diversity and challenging ableism, principles that we think are captured in the phrase "he mana tō tēnā, tō tēnā, ahakoa ko wai". These principles should be given prominence in the design and operation of the new system.

He tūtohitanga - Recommendations

4. The puretumu torowhānui system should be founded on the following principles, values and concepts:

- *Tūkino:* is, in this context, abuse, harm and trauma. It includes past, present or future abuse, whether physical, sexual, emotional, psychological, cultural or racial abuse; or neglect, which may also include medical, spiritual or educational neglect, experienced by individuals and their whānau, hapū, iwi and hapori or communities in the care of State and faith-based institutions.
- *Purapura ora*: in this context, refers to survivors and their potential to heal and regenerate in spite of the tūkino they experienced.
- *Te mana tāngata*: is, in this context, the restoration of and respect for the inherent mana (power, dignity and standing) of people affected by tūkino.
- *Utua kia ea:* is a process that must be undertaken to account for tūkino and restore mana to 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:* is, in this context, the nurturing of the oranga or wellbeing of survivors and their whānau so that they can prosper and grow. This includes treating survivors and their whānau with atawhai, humanity, compassion, fairness, respect and generosity in a manner that upholds their mana (this includes being survivor-focused and trauma-informed) and nurtures all dimensions of oranga including physical, spiritual, mental, cultural, social, economic and whānau, in ways that are tailored to, culturally safe for, and attuned to, survivors.
- *Mahia kia tika:* is to be fair, equitable, honest, impartial and transparent. In this context it includes a puretumu torowhānui scheme that has clear, publicly available rules and other information about how it works, and regular reviews of its performance.
- *Whakaahuru:* in this context, refers to processes to protect and safeguard people including 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.

- *Whanaungatanga:* refers to the whakapapa, or 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, puretumu torowhānui should facilitate individual and collective oranga and mana, connection or reconnection to whakapapa, and cultural restoration.
- *Teu le vā / tauhi vā*: is the tending to and nurturing of vā, or interconnected relationships between people and places, to maintain individual and societal oranga. Where there has been abuse, harm or trauma steps must be taken to heal or re-build the vā and re-establish connection and reciprocity.
- *He mana tō tēnā, tō tēnā – ahakoa ko wai*: 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 puretumu torowhānui system and scheme, and their 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 disabled people, the tūkino and neglect they experience and their needs for restoration of mana and oranga, invisible.



"The purpose of redress is [to] give survivors their dignity back. To help them live the rest of their lives without the tormented memories. To help them with rehabilitation and for Māori whakapapa restoration. This [helps] financially, physically and emotionally. I think we all have our individual views on what we think redress should be."

HANGA PŪNAHA ME TE TUKUTANGA
SYSTEM DESIGN AND DELIVERY

Te mahitahi me te Māori - Working in partnership with Māori

We consider it essential the Crown works in partnership with Māori when designing and operating the puretumu torowhānui system because of its te Tiriti obligations, because Māori are disproportionately affected by abuse in care, because Māori should be able to exercise tino rangatiratanga over a kaupapa that is central to their communities, and because tikanga Māori principles are sound ideas on which to base a system uniquely designed for survivors in Aotearoa New Zealand.

Specifically, we consider the Crown should establish a Māori Collective to lead the design of the puretumu torowhānui scheme, and also to work with survivors and their communities to develop an action plan to implement our recommendations for the puretumu torowhānui scheme and system. This includes working with a Purapura Ora Collective (see below), survivors' communities including Pacific, Deaf and disabled communities, whānau, hapū, iwi, experts, service providers, stakeholders and community leaders. Ultimately the Māori Collective will need to work with the Crown and agree on the contents of any draft legislation required to give effect to any of the recommendations set out in this report, including draft legislation giving effect to the puretumu torowhānui scheme.

We would also see the Māori Collective exploring the possibility of a separate puretumu torowhānui scheme for Māori. Our sense is that one scheme guided by te ao Māori principles should be able to work for Māori and non-Māori alike. However, the question of whether a separate scheme for Māori should be established is not something we have been able to explore in detail.

The Māori Collective's workload is likely to be significant, so it will need to be adequately resourced. We see the Crown providing this funding until its work is done. Establishing the Māori Collective would not displace the Crown's te Tiriti obligations to partner with Māori in the design and running of the scheme.

He tūtohitanga - Recommendations

5. The Crown should establish and fund a well-resourced independent Māori Collective made up of Māori with relevant expertise and/or personal experience and representing a mix of survivors, whānau, hapū and iwi, pan-tribal organisations and urban Māori with a fair mix of gender, LGBTQIA+, rangatahi and Deaf and disabled people to:

- lead the design of the puretumu torowhānui scheme
- work with survivors, the Purapura Ora Collective, survivors' communities (including Māori, Pacific, Deaf and disabled communities) and other relevant groups to develop a plan to implement our recommendations, including:
  - establishing a puretumu torowhānui system underpinned by tikanga Māori
  - developing the process for applying for redress
  - determining what support and services are needed to respond to tūkino, enhance mana and achieve utua kia ea
  - considering proposed civil litigation reforms
- work with Māori survivors, whānau, hapū and iwi to:
  - explore whether to establish a separate puretumu torowhānui scheme for Māori
  - determine the nature, timing and content of an apology or apologies to Māori for abuse in care, as well as the nature of memorials to those abused
- commission any reports, reviews or expert advice on areas considered important to the design of the puretumu torowhānui system and scheme, including an expert review of oranga services (see recommendation 68)
- build on this inquiry's work by exploring how to respond to harm suffered by Māori in care to restore mana, tapu and mauri
- work with the Crown and agree on the contents of any draft legislation required to give effect to any of the recommendations set out in this report.

Ka whai wāhi mai ngā purapura ora, ā, ka pāhekoheko hoki te Karauna ki te wānanga i ngā panonitanga
Active involvement by survivors and consultation by Crown about changes

Input from survivors is clearly absent from existing redress processes, and many survivors have rightly called for this to change. The Crown should closely consult and actively involve[905] survivors in the design and operation of the puretumu torowhānui system and scheme. As well as being inherently right, this is also good practice. As set out in part 1.4, the United Nations Convention on the Rights of Persons with Disabilities requires this for disabled survivors, and we think the Crown should adopt this standard for all other survivors.

We consider the Crown should mainly do this consultation through a group whose main purpose would be to advocate for survivors during the Crown's decision-making on our recommendations and provide the Crown with expert advice. This group, which we refer to in this report as the Purapura Ora Collective, would consult survivors about our recommendations and the Crown's proposed actions in response, and co-ordinate feedback to the Crown on how to implement them. The Purapura Ora Collective could carry out this frequently time-consuming and demanding work on behalf of the many survivors who are not in a position to get involved in this way.

Sometimes the collective may relay responses that have broad consensus and other times it may communicate a diverse range of views. Through its work, it would provide the Crown with informed, insightful commentary about what is needed to bring about the puretumu torowhānui system and scheme we recommend. If views differ, the collective may present the Crown with options. It may also look to overseas experiences for guidance, but should not lose sight of the unique context here at home. It should work closely with the Māori Collective, including to commission the expert review of oranga services.

The Purapura Ora Collective is likely to have a sizeable workload and will need adequate resourcing. The Crown should fund it until its work is done. It should be supported by staff with the necessary expertise to work with survivors and provide productive, solutions-focused commentary and advocacy to the Crown. Some staff should have lived experience of disability.

The Crown should also consult survivors, experts and other interested people on the new system and scheme. As part of this, it should work with Pacific peoples to understand how both the new puretumu torowhānui system and scheme can be designed and run in ways that are consistent with the values of Pacific cultures and practices, such as ifoga, fakalelei and ho'oponopono.

The Crown should also consult Deaf and disabled people to ensure the scheme complies with the United Nations Convention on the Rights of Persons with Disabilities, including the rights of disabled people and the corresponding obligations for New Zealand set out in articles 4(3), 9, 12, 13, 16(2) and 16(4) of the convention, and the New Zealand Disability Strategy.[906] The Crown should also take an inclusive approach to ensure the many voices of survivors including youth and LGBTQIA+ are also heard.

We expect faith-based institutions and indirect State care providers to contribute to the funding and effective running of the scheme, and the Crown should consult them, too, on our recommendations.

Finally, we draw attention to the need for the Crown and the two collectives to co-ordinate their consultation activities in a kaupapa-focused way to avoid duplicating effort and overburdening survivors and their whānau and communities.

He tūtohitanga - Recommendations

6. The Crown should closely consult and actively involve survivors in the design and running of the puretumu torowhānui system and scheme and the implementation of recommendations in this report and other reports this inquiry may produce. This should include establishing and funding an independent Purapura Ora Collective employing people with relevant expertise and lived experience of disability to:

- advocate for survivors during Crown decision-making on our recommendations
- ensure the puretumu torowhānui system and scheme are designed from the perspective of survivors
- commission, together with the Māori Collective, the expert review of oranga services.

7. The Crown should consult survivors, experts and other interested people, including:
    - *Pacific peoples:* on how the puretumu torowhānui scheme should be designed and run in a way that is consistent with Pacific cultures, including how the scheme and broader system can incorporate principles from Pacific restorative processes such as ifoga, fakalelei, isorosoro and ho'oponopono
    - *Deaf and disabled people:* on how the design and running of the scheme will give effect to New Zealand's obligations in the United Nations Convention on the Rights of Persons with Disabilities, and the New Zealand Disability Strategy
    - *A cross-section of survivors and experts:* on how the scheme can be inclusive of a range of people, including youth and LGBTQIA+.
8. The Crown should also consult faith-based institutions, indirect State care providers, other interested parties and the public.

He ahunga pūnaha - All-of-system approach

The effectiveness of the changes we recommended will depend, in part, on a well coordinated response by the government agencies, and other agencies (including faith-based institutions and non-government organisations) involved in or responsible for a host of matters relating to survivors, ranging from the provision of oranga services and the release of survivor records through to the prosecution of perpetrators. Government agencies include ACC, the New Zealand Police, the Ministry of Social Development, Ministry of Justice, Ministry of Health, Oranga Tamariki, Ministry of Education and organisations such as WorkSafe New Zealand. These government agencies also have relationships with faith-based organisations, non-government institutions and community groups that are integral to the provision of survivor care and will also be crucial to the effectiveness of our recommendations.

He tūtohitanga - Recommendations

9. The Crown should take an all-of-system approach to responding to abuse in care.

MIHI ME TE WHAKAPĀHA TŪMATANUI
PUBLIC ACKNOWLEDGEMENT AND APOLOGIES

Many survivors emphasised the importance of a public apology – whether instead of or in addition to a personal apology – from the organisation concerned. They saw a public apology as validation of the abuse they had suffered and as an element of ensuring accountability for that organisation. Survivors expressed a wish for the most senior figures of the Crown to issue apologies, and for similarly senior figures of faith-based institutions to do the same. The same should also apply to the heads of indirect State care providers, that is, private, public or non-governmental organisations to which the State passed on its authority or care functions.

At our faith-based redress hearing, The Salvation Army, the Anglican Church and the Catholic Church made public apologies. By contrast, neither the Prime Minister nor any State institution has made any public apology (unlike leaders in other countries, such as Scotland and Ireland). Such an apology from the Crown, and the heads of relevant faith-based institutions and indirect State care providers, would be a symbolic counterweight to the years of denial of any systemic problem in care institutions. Where appropriate, we also consider particular groups, including Māori, should receive specific public apologies where those groups have suffered uniquely in some way.

He tūtohitanga - Recommendations

10. The Crown and relevant faith-based institutions and indirect State care providers should publicly acknowledge and apologise for the tūkino inflicted and suffered, at an individual, community and national level, including:

- a public apology to survivors by the Governor-General, Prime Minister and heads of relevant faith-based institutions and indirect State care providers
- specific public apologies, where appropriate, to specific groups harmed, including Māori, either on this inquiry's recommendation or that of the puretumu torowhānui scheme, or as a result of direct engagement with affected communities.

11. The Crown, Māori Collective, Purapura Ora Collective and relevant institutions should determine the content of public apologies and related matters, such as when and where they are made, in collaboration with survivors and in conformity with the principles of good apologies set out below in recommendation 33.

TE WHAKATŪNGA O TĒTAHI KAUPAPA PURETUMU HOU
ESTABLISHMENT OF A NEW PURETUMU TOROWHĀNUI SCHEME

He kaupapa motuhake - An independent scheme

The problems with existing redress processes are well-documented. The solution, in our view, is establishing a new puretumu torowhānui scheme that is open to all survivors of abuse in State and faith-based care, including indirect State care, and is independent of the State, indirect State care providers and faith-based institutions. That is, it should be an independent Crown entity, not a departmental public body.[907]

This puretumu torowhānui scheme would help ensure there is consistency and equity in the outcomes for survivors. Properly designed, it would be survivor-focused, trauma-informed and accessible to all survivors. Properly resourced, it would become an efficient way of providing puretumu torowhānui, and in particular would develop specific skills and work proficiently with Māori, Pacific, Deaf and disabled people. Properly independent, it would avoid the need for survivors to approach the organisations they distrusted, an interaction many found distressing or traumatising, and it would also eliminate the inherent conflict of interest these organisations face in investigating themselves. Such a scheme, being governed by legislation, would have defined rules and transparent outcomes. Further, having a single scheme that covers all State, indirect State care and faith-based institutions would mean that survivors who were abused in several institutions would not need to seek puretumu torowhānui from each.

In our public consultation, support for creating a scheme like this was overwhelming.[908] Only two submissions from organisations opposed such a step. Seven faith-based organisations made submissions: the Anglican Church, the Methodist Church, The Salvation Army, Presbyterian Support Services, the Society of Mary, the Presbyterian Church and Te Rōpū Tautoko, a group co-ordinating Catholic Church engagement with this inquiry. All supported some form of independent agency being created, although they had different ideas about what role it should play. The Society of Mary, for example, wanted it to have a "second-tier" review function. Te Rōpū Tautoko said the agency could function as an independent appeal

body. All intended to continue their existing redress processes because they said it was important survivors had a choice of avenues through which to seek redress.

Some faith-based institutions had reservations about a single scheme. First, they said some survivors might want pastoral or other forms of support from their institution. However, we do not see the new puretumu torowhānui scheme precluding survivors from getting pastoral support if they wish. Secondly, they said some survivors might want an apology for harm directly from the institution concerned or might want to take part in restorative justice or reconciliation with the institution. Again, the new puretumu torowhānui scheme would not stop survivors from doing that. Thirdly, they said they needed to be involved in providing puretumu to ensure accountability for the abuse. However, nothing in the new scheme we propose would stop them from ensuring accountability by acknowledging and apologising for the tūkino, or abuse, harm and trauma and contributing to the cost of puretumu torowhānui. Finally, they said there was a risk of creating yet another impersonal – and overwhelmed – bureaucracy much like the claims processes run by government agencies. However, we think this risk can be minimised by good scheme design, resourcing and regular reviews.

We considered three other options: imposing a set of nationally consistent principles on existing redress processes; putting the Ministry of Social Development, the largest operator of the largest claims process, in charge of a single scheme; and introducing a scheme that did not include faith-based institutions. However, the first two options would have attempted to modernise what are fundamentally flawed set-ups, while the third would have perpetuated inconsistencies between State and faith-based redress, and required some survivors still to make claims to both.

He tūtohitanga - Recommendations

12. The Crown should set up a fair, effective, accessible and independent puretumu torowhānui scheme to help survivors and their whānau affected by abuse in State care, indirect State care and faith-based care to achieve utua kia ea or heal the vā, heal the relational space between all things, and help prevent abuse in care.

13. The principles, values, concepts, te Tiriti obligations and international law commitments that will guide the design of the puretumu torowhānui system should guide the design and implementation of the puretumu torowhānui scheme.

14. The membership of the governance body for the puretumu torowhānui scheme should give effect to te Tiriti o Waitangi, and reflect the diversity of survivors, including disabled survivors, as well as including people with relevant expertise.

Ka mutu ngā hātepe kēreme o te wā
Discontinuation of current claims processes

We consider State and faith-based institutions should wind up their current claims processes once the puretumu torowhānui scheme is established because the continuation of current processes would be an unnecessary duplication of effort and resources, might confuse survivors and might complicate the functioning of the new scheme. The same applies to any claims process run by indirect State care providers. If, however, some faith-based institutions and providers continue to offer a process of their own in parallel with the puretumu torowhānui scheme, we would strongly encourage them to direct survivors to the new scheme and give them information about it.

He tūtohitanga - Recommendations

15. State and faith-based institutions should phase out their current claims processes for abuse in care, and any faith-based institution or indirect State care provider that chooses to continue its own claims process should direct survivors to the puretumu torowhānui scheme and give them information about it.

Ngā āhuatanga o te kaupapa puretumu torowhānui
Functions of the puretumu torowhānui scheme

The puretumu torowhānui scheme will have four core functions. The first will be to provide a safe, supportive setting that is consistent with the principles of utua kia ea and manaakitia kia tipu and enables survivors to freely disclose the details of their abuse and the traumatic feelings that go with disclosures. The necessary supports must be in place to help survivors deal with these feelings and the impact of the trauma. The Māori Collective will seek further information on appropriate services to support survivors and whānau.

The second will be to make decisions on survivors' claims and determine whether and what sort of puretumu torowhānui survivors should receive. To do this, the scheme will need to have fair processes for considering survivors' accounts and making decisions on puretumu torowhānui, as well as clear processes and systems for facilitating puretumu torowhānui. All these processes must recognise the specific cultural needs of survivors and their whānau. The scheme will facilitate acknowledgements and apologies, along with support services to restore mana and oranga. It will also facilitate or make financial payments to survivors through funding mechanisms described below.

The third function will be to tell as many survivors as possible about the scheme, including how to access it. The fourth will be to identify and report on systemic issues related to abuse and how to prevent abuse happening again. This final function will grow as the scheme gains experience and expertise.

He tūtohitanga - Recommendations

16. The functions of the puretumu torowhānui scheme should be to:

- provide a safe, supportive environment, consistent with the value of manaakitia kia tipu, for survivors to talk about their abuse
- consider survivors' accounts and make decisions on puretumu torowhānui, which may include:
  - facilitating acknowledgements and apologies by institutions for tūkino, or abuse, harm and trauma, in care
  - facilitating access to support services, financial payments and other measures that enables te mana tāngata
- disseminate information about the scheme so as many eligible individuals as possible know about and can access its services
- report and make recommendations on systemic issues relevant to abuse in care.

Motuhaketanga - Independence

The puretumu torowhānui scheme must be independent of the State and faith-based institutions and indirect State care providers where tūkino took place – a point made by almost every survivor we heard from. We have already examined the inherent conflict of interest in organisations investigating themselves. By operating independently, the scheme is much more likely to gain the trust and confidence of survivors. This independence will require the scheme to have no connection with the care institutions or the individuals within them except as needed to carry out its functions. This will include having no connection with those allegedly responsible for the abuse of survivors or those responsible for defending any abuse claims in court.

He tūtohitanga - Recommendations

17. The puretumu torowhānui scheme should operate independently of the institutions where tūkino or abuse, harm and trauma took place and should have no interactions with these institutions or the people within them, except where necessary to carry out its functions, and this includes individuals or institutions:

- responsible for providing care to survivors
- allegedly responsible for the abuse
- responsible for defending any abuse in care claims in court.

Whaiwāhitanga me te uruparetanga
Inclusivity & responsiveness

Consistent with the principle of he mana tō tēnā, tō tēnā - ahakoa ko wai, the puretumu torowhānui scheme should be open to all survivors of abuse in care. This includes those who have been through previous State or faith-based redress processes, including civil litigation, with whether or not they settled their claim, because we have found these processes to be flawed. The scheme should, however, take into account any payments survivors have already received, including any from ACC.

The scheme should include survivors in prison or with a criminal record, including those convicted of serious offences. Between 2008 and 2017, the National Government considered a policy to exclude serious offenders, but the Labour Government elected in 2017 decided not to take the matter further. In Australia and in Scotland, serious offenders can be denied redress payments. However, we consider there should continue to be no exclusion for serious offenders or any extra criteria for them to meet. A large number of those in prison have been in care and the tūkino they suffered may have contributed to their offending. Most are Māori, and they and their whānau are likely to be among those most in need of help through the scheme.

We also consider whānau members should be able to seek puretumu torowhānui on behalf of deceased survivors – something strongly favoured in public submissions. This is consistent with the principle of whanaungatanga. Puretumu torowhānui for such survivors helps whānau feel the wrongdoing has been acknowledged – and may also provide them with an inheritance they would never otherwise receive.[909] Some survivors, we should note, objected strongly to their parents, or anyone other than their children, being able to seek redress on their behalf.

Administrators of some overseas schemes told us claims by surviving family members were among the most complex applications they received. We consider the scheme should continue on with applications received from survivors who died after lodging their applications. We consider the scheme should also receive claims brought on behalf of survivors who did not make an application before dying, but only if family and whānau can give the scheme clear evidence the survivor intended to apply for puretumu torowhānui or had taken other steps to make a claim. Survivors who had taken no such steps before dying might not have wanted puretumu torowhānui or might not have wanted family members to discover highly personal details about their experiences. Also, a survivor's family may find it hard to provide evidence of tūkino, especially if the survivor did not discuss their experience in detail. The scheme should certainly show some flexibility on this question of claims

on behalf of deceased survivors, but it must not proceed with applications or allow the disclosure of a survivor's information without clear evidence that the survivor intended to claim puretumu torowhānui. The alternative would be to compromise the scheme's integrity.

We also consider the scheme should give priority to claims from seriously ill and elderly survivors, and should have the power to make interim payments to them. Australian, Canadian and Scottish redress schemes all give (or gave) priority to such survivors. Quite apart from showing compassion to such individuals, it is essential to treat their claims with urgency because survivor accounts are usually the main evidence adjudicators rely on to make decisions about redress. It also increases the chance of survivors enjoying the benefits of redress.

We leave two matters about puretumu torowhānui to future reports. One is claims by whānau for intergenerational harm, and the second is other collective redress, such as to groups of survivors, hapū or iwi. We will make recommendations in later reports on the extent to which whānau of survivors can independently apply to the scheme for puretumu torowhānui in relation to harm they suffered as a result of the tūkino suffered by the survivor. We will also make recommendations on how the scheme or system can facilitate other collective redress. Redress for groups, hapū or iwi could be in the form of public apologies and memorials, as discussed below, although other forms of collective redress may also be appropriate.

He tūtohitanga - Recommendations

18. The puretumu torowhānui scheme should:

- be open to all survivors, including those who have been through previous redress processes, those covered by accident compensation, and those in prison or with a criminal record
- enable whānau to continue a claim made by a survivor if the survivor dies, or make a claim on a survivor's behalf if there is clear evidence that the survivor intended to apply to the scheme or had taken other steps to make a claim before their death
- prioritise claims from elderly or seriously ill survivors, including making urgent interim payments to those survivors where appropriate.

Ngā hara ka whai wāhi atu e ai ki te kaupapa
Abuse covered by the scheme

The scheme should cover physical, sexual, emotional, psychological, racial and cultural abuse, along with neglect, in State and faith-based care, including indirect State care.[910] In our opinion, this would include matters such as wrongful detention in care. Our terms of reference refer to neglect and all these types of abuse, apart from racial and cultural abuse, which we consider to be forms of emotional or psychological abuse. We make the following observations about these two types of abuse, together with neglect.

Kore manaaki - Neglect

We consider neglect includes physical, emotional and psychological, medical, spiritual and educational neglect. The World Health Organisation has a comprehensive definition of neglect in the context of child abuse,[911] and New Zealand law recognises a view of neglect that includes mental and emotional wellbeing.[912] Cases have also considered neglect in the context of education, which could include not addressing long absences from school, a pattern of failing to get a child to school on time, or a pattern of not providing a child with clean clothing or sending a child to school unwashed, resulting in teasing by, or isolation from, other children.[913] Neglect is typically a course of conduct, rather than a one-off act, and may be combined with abusive acts.

Tūkino ā-iwi - Racial abuse

The Human Rights Act 1993 provides a useful definition. It makes "racial harassment" unlawful when it happens in particular places.[914] It describes racial harassment as behaviour that:

(a) expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that person; and

(b) is hurtful or offensive to the person being harassed (whether or not the person communicates that to the harasser); and

(c) is either repeated, or of such a significant nature, that it has a detrimental effect on the person being harassed.[915]

Many survivors were subjected to racial slurs and harassment. We consider a survivor who experienced this type of harassment while in care should be able to seek redress from the scheme. A survivor may have a claim under the Human Rights Act 1993, but in our view should also have the option of seeking redress for it instead of, or as well as, taking that claim.

Tūkino ā-ahurea - Cultural abuse

We consider cultural abuse can be defined as:

- disconnection from culture, language, whakapapa or identity[916] as a result of being placed in care institutions where a survivor's own culture is not recognised or where their cultural connections are actively discouraged
- misidentification of ethnicity or cultural identity by a care institution denying a survivor knowledge of their culture, language, whakapapa or identity
- discriminatory or harmful treatment, including systemic or overt racism, by a caregiver or care institution because of a survivor's cultural identity.

He tūkino ahakoa pēhea te kino - No seriousness requirement

We examined whether the scheme should accept only serious abuse because a broader definition would greatly expand the number of claims likely to be made to it, which would require more resources and potentially cause delays. However, such a qualification would be inconsistent with the principle of manaakitia kia tipu, showing care and compassion for those abused, no matter how serious the abuse was. Furthermore, it would amount to focusing on the actions of the abuser instead of the impact on the survivor, and it would be difficult to define serious abuse. We therefore consider there should be no seriousness requirement, although the nature of the abuse and, where relevant, the impact of the abuse on a survivor will be relevant to what puretumu torowhānui redress that person receives.

Te wā tūkino - When abuse happened

The scheme should cover historic, contemporary and future abuse claims, historic being before 2000, contemporary being from 2000 to 2021, and future being 2022 onwards. Some survivors, of course, suffered abuse spanning more than one of these periods. Overseas redress schemes have typically had a defined coverage period, but we consider a different approach is needed. Historical abuse should be covered because survivors of such abuse may not be eligible for accident compensation payments based on when the abuse happened. They may also have the most difficulty obtaining evidence of abuse and overcoming limitation period defences. A puretumu torowhānui scheme may also be the only remedy for these survivors, even under a revamped civil litigation regime (discussed later).

More generally, we consider survivors should not be treated differently based on when the abuse happened. Here, we are guided by the principles of mahia kia tika and he mana tō tēnā, tō tēnā - ahakoa ko wai. Also, setting a cut-off date would be difficult to determine, could be seen as arbitrary, and could create unfairness. Excluding contemporary and future abuse claims could only be justified, in our view, when there

is evidence the scheme is no longer needed, which is not the case at present. Funding an open-ended scheme is nothing new – State agencies do this already with their out-of-court claims processes. Public submissions broadly supported our view on this question.

Ngā wāhi - Institutions covered

Access to puretumu torowhānui should not depend on the institution in which a survivor was abused. The scheme should therefore cover all those who suffered abuse in the care of State and faith-based institutions, and this includes private care providers and other organisations, such as Stand Tū Māia and disability community care providers, to which the State passed on its care functions in any way.

He tūtohitanga - Recommendations

19. The puretumu torowhānui scheme should cover:

- physical, sexual, emotional, psychological, racial and cultural abuse in care, along with neglect, which may include medical, spiritual and educational neglect
- historical, contemporary and future claims of abuse in care.

20. The puretumu torowhānui scheme should, regardless of whether an institution still exists or has funds, cover abuse in:

- any State agency that assumed responsibility, either directly or indirectly, for the care of an individual when they were abused, including:
  - State schools
  - any individual, or any private, public or non-governmental organisation, including a service provider, to which the State passed on its authority or care functions, whether by delegation, contract, licence or in any other way
- any faith-based institution that assumed responsibility for the care of an individual when they were abused.

Te whakaurunga o ngā kaiwhakarato taurimatanga motuhake a te Karauna me ngā ratonga taurima whakapono
Participation of faith-based and indirect State care providers

Faith-based institutions and indirect State care providers need to be held to account for the abuse of those in their care, and participation in the scheme is one way to do this. Some have already indicated their intention to join on moral grounds, and we consider it reasonable to give others the opportunity to join on a voluntary basis. These other institutions may also be persuaded by the advantages of not having to run their own claims processes or by the realisation their contribution to the scheme may be lower than the cost of defending claims in court.

Overseas experience, however, has shown that some institutions don't join redress schemes promptly or willingly. In Australia, legislation stemming from the royal commission into sexual abuse gave institutions two years to join. Some took a long time to join, forcing some survivors' claims to be put on hold until they did.

In Australia, institutions that did not join that country's National Redress Scheme, risked losing their charitable status, charitable tax concessions and government grant funding.[917] The risk of such sanctions motivated some institutions to join the scheme.[918] We consider the Crown should give institutions a reasonable period of time, say four to six months, to join voluntarily. If they do not, the Crown should consider incentives to encourage participation and, failing that, compel participation.

He tūtohitanga - Recommendations

21. The Crown should give faith-based institutions and indirect State care providers a reasonable opportunity, say four to six months, to join the puretumu torowhānui scheme voluntarily before considering, if necessary, options to encourage or compel participation, including:

- not offering contracts to non-participating institutions
- terminating or not renewing any contracts with them
- revoking their charitable status
- making participation in the scheme compulsory.

Te whakawhiti kōrero me ngā purapura ora
Communicating with survivors

Survivors are a diverse group of individuals. Many may be hard to reach and communicate with, for reasons including disability or personal circumstances. A further barrier is the deep distrust many feel towards organisations in general. This makes it all the more important that the scheme is good at explaining what it does, who can make a claim, and how to go about making a claim. Active and well-targeted communications, engagements and promotions strategies will be essential to ensuring as many survivors as possible learn about the scheme and what it has to offer.

These policies and plans must recognise the specific challenges and circumstances of different survivor communities. Specific strategies will be needed for communicating with Māori survivors, whānau and communities, including strategies for reaching Māori in prisons, forensic mental health, youth justice and child protection residences.

Disabled survivors, many of whom may be in life-long or long-term care, often have significant communication difficulties. They may have low literacy or rely on non-verbal forms of communication. They may not understand what abuse or neglect is or have the language to describe it. It will take particular skill and attention to reach this group of people and help them make informed decisions. The review of the Australian National Redress scheme noted the concern that guardians and support workers – particularly of those living in supported accommodation – may be unwilling to tell disabled survivors about redress (whether because of the sensitivity of the subject of abuse or out of self-interest).[919] It also noted that those living in disability institutions often relied on carers and workers for information.[920] This adds yet another challenge to the task of communicating with this group. Some disabled people may be living in institutions where they are being, or have been, abused, and they may be concerned that disclosing abuse will affect the quality of their future care or put them at risk.[921] Education sessions for disabled people should be part of this communication work and should cover what abuse is, what the scheme does, and what the scheme can do to safeguard disabled people who are still in care when they make a claim.

Specific communication strategies will be needed to reach Pacific peoples, those from different cultures, homeless people, people in prison, people living overseas, and people with learning disability, neurodiversities, low levels of literacy and communication support needs. Survivor advocacy groups may be called on to help reach these groups.

He tūtohitanga - Recommendations

22. The puretumu torowhānui scheme should:

- extensively and proactively publicise, on an ongoing basis, what it does, how to contact it, the types and levels of redress and support available, eligibility and assessment criteria, and timeframes for making decisions on claims
- develop specific strategies to communicate with survivors, including running specialist education sessions for disabled people about the scheme and what constitutes abuse
- develop specific strategies to communicate with Māori survivors and their whānau, hapū, iwi and hapori (communities)
- actively reach out to disabled survivors including disabled survivors in long-term or life-long care
- offer easy-to-read information in a variety of accessible formats about how the scheme works
- ensure a supported decision-making process is available for disabled people that is consistent with the United Nations Convention on the Rights of Persons with Disabilities, including, where necessary, by providing dedicated support and communication assistance.

Ngā whakawhitinga i waenganui i te kaupapa me ngā purapura ora
Scheme's interactions with survivors

The puretumu torowhānui scheme should take what we call a trauma-informed approach to its interactions with survivors. This means putting survivors' needs first and taking care to do no harm to them. It also means listening to them, communicating clearly with them, giving them choice about how they interact with the scheme and what support they receive. As well, it means ensuring survivors have control over how, when, in what form and to whom they disclose abuse.[922] Recognising symptoms of trauma is vital, too. The scheme must make survivors feel safe and welcome. It must make them feel they are a person, not a file. The Māori Collective may want to offer its view on what a trauma-informed approach looks like from a te ao Māori perspective.

The scheme should as far as possible ensure each survivor deals with one individual only, thereby building up a relationship of trust and understanding. This individual will

keep the survivor updated on the progress of their claim and answer any questions along the way. A single point of contact also minimises the number of times a survivor will have to recount details of the abuse and any other personal matters.

The scheme's staff, including its claim assessors, and providers should also interact with survivors in a culturally meaningful, respectful and safe way. A suitably skilled workforce, including staff with lived experience, will be essential.

Some survivors may want to withdraw their claim or put it on hold temporarily and they should be supported in any such decision. Collaborative decision-making should be a feature of the way the scheme works. Survivors with decision-making impairments may need extra support to make their own informed decisions about how they interact with the scheme and the type of claim they make.

He tūtohitanga - Recommendations

23. The puretumu torowhānui scheme should:

- be trauma-informed and flexible, give survivors choices and empower them to make decisions
- minimise any barriers to obtaining redress
- be timely, give accurate estimates of timeframes and regularly update survivors on the progress of their claim
- allow survivors to be flexible about when they start, put on hold and resume their claim
- be respectful of, and responsive to, the cultures of all survivors, including Māori, Pacific peoples and Deaf people
- support survivors to make their own informed decisions throughout the claims process, particularly those with decision-making impairments
- have enough suitably trained staff so that each survivor ideally needs to contact just one person about their needs
- minimise the number of times survivors must recount the tūkino or abuse, harm and trauma suffered.

He tautoko i te wā tuku kerēme - Support when making a claim

The principle of manaakitia kia tipu should imbue all aspects of the culture and functioning of the scheme so survivors feel safe and supported as they go through the process of making a claim – something many may find difficult because of the

tūkino they have suffered. This support should be available from the outset. What form it takes will depend on the circumstances and wishes of each survivor. Some survivors may need a dedicated person, or navigator, to help them understand the redress process. They may have communication and literacy difficulties and may struggle to understand and complete forms. Many will need a translator and culturally appropriate support. Disabled survivors – particularly those living in residential care – may have more complex needs. The scheme must adapt its work practices to their needs, not the other way around. They must have the same access to physical environments, information and communication, and other facilities and services that the public has. Specialist support – such as interpreters, supported decision-making assistance and communication tools – should be available, too, when needed.

All survivors should have access to counselling and psychological care, the services of social workers and navigators, help obtaining and understanding records, legal advice, non-legal advocacy, help making a claim, help contacting survivor support groups, and any other practical help. Free counselling and other appropriate psychological and therapeutic care should be offered throughout the claims process and, where necessary, afterwards. A survivor's whānau should also have access to free counselling. For disabled survivors still in care, the scheme must ensure there is no risk of retribution or diminished care in making a claim (see below).

Agencies and individuals providing support services need to be independent of the scheme so they can advocate on survivors' behalf when dealing with the scheme. This would also avoid the need for the scheme to have too many disparate functions. An Australian service provider, knowmore, may be a good model to follow as it helps survivors of institutional sexual abuse make claims. It offers free legal advice and other support services.[923]

Many survivors will benefit from help to obtain their personal records from institutions. They often don't know where to go and who to ask for their records. Sometimes several organisations hold their records, which can be stored at different locations and have different procedures for accessing them. Some organisations no longer exist, and their files have been transferred elsewhere. Prisoners and survivors with disabilities find this task particularly difficult. Understanding the files can be a further hurdle for survivors with learning disability or poor literacy skills. Some survivors may need help making complaints to the Privacy Commissioner or to an ombudsman about accessing their records. Others may need help exercising rights under the Privacy Act 1993 to, for example, ask agency to correct personal information held about them or to include in their file a statement setting out what they think is the correct version of events.

Many survivors need emotional support when they read their files because they detail confronting and emotional experiences, including hurtful or disparaging material about them or their whānau. Some survivors discover incorrect or previously unknown information on their files. Survivors should receive counselling and other appropriate psychological care when they receive records and for a reasonable period afterwards.

Free legal advice and non-legal advocacy should be available to all survivors. This should not depend on eligibility for legal aid to avoid creating a barrier to redress. Lawyers and advocates working with disabled people need to be appropriately trained to work with such clients.

Some survivors who approach the scheme may want to make a complaint to Police, the employer of their abuser or the relevant disciplinary body, and in such cases the scheme should give them the information and support so they can take this step.

The scheme should put in place a safeguarding framework to ensure disabled people are not at risk of retribution or lower levels of care by the organisation they are making a claim about, since many continue to live in long-term care in those organisations. Before the scheme shares any information about a claim filed by a disabled survivor, a specialist advocate should assess whether disclosure of the claim to the organisation concerned would result in the individual being at risk of harm, violence, abuse or neglect.[924]

Survivors may also need such immediate practical help as access to safe housing, food, medical care and childcare and managing debt or fines before they can make a claim. The scheme should arrange for social workers and navigators to help survivors meet these needs. Some survivors may benefit from being linked in with survivor support groups. The specific types of support will depend on the needs of each survivor and their whānau. The scheme may facilitate help completing forms, attending meetings, deciding whether to accept a puretumu torowhānui offer, participating in any review, and receiving an apology.

He tūtohitanga - Recommendations

24. The puretumu torowhānui scheme should have processes in place so that survivors and their whānau who interact with it receive manaakitia kia tipu.

25. The puretumu torowhānui scheme should provide support services that are free, flexible, culturally appropriate and tailored to individual needs to help survivors, and where appropriate whānau, understand the tūkino and make a claim, including:

- counselling and psychological care, including when survivors receive their records, and for a reasonable period afterwards
- social workers and navigators to help meet any immediate needs
- free independent legal advice, irrespective of eligibility for legal aid and non-legal advocacy, including advocacy for disabled people that meets the requirements of articles 13(1) and (2) of the United Nations Convention on the Rights of Persons with Disabilities
- help to obtain and understand personal records
- advocates for survivors in their dealings with organisations holding their records
- help to get in touch with survivor support groups
- support to make complaints about alleged abusers
- interpreters, translators, supported decision-making and communication assistance
- safeguards to ensure disabled survivors in care are safe from any retribution for making a claim
- help, as necessary, to make complaints to the Privacy Commissioner or an ombudsman.

Ratonga whakarongo - Listening service

Most survivors told us about the benefits of discussing their abuse with someone in a safe and non-judgemental setting. One example they cited was their one-on-one session with commissioners. Another was the former Confidential Listening and Advice Service. In our view, there will continue to be a need for an outlet of some sort well into the future, and we therefore consider the puretumu torowhānui scheme should offer a listening service to survivors. Some may want to use this service only and not make a claim. But if they change their mind, the scheme can, with their consent, use the information they have disclosed as part of their claim, thereby minimising the number of times they have to describe their abuse. The scheme will need to keep this function separate from its other work, have staff whose skills include skills specific to this service, and ensure information disclosed through the service is protected.

He tūtohitanga - Recommendations

26. The puretumu torowhānui scheme should offer a listening service to survivors so they can talk about their experiences of tūkino, or abuse, harm and trauma, in a private and non-judgemental setting.

27. The puretumu torowhānui scheme should, if survivors wish, use information disclosed to the listening service in support of their claim for puretumu torowhānui.

E RUA NGĀ ARA KI PURETUMU TOROWHĀNUI
TWO ROUTES TO PURETUMU TOROWHĀNUI

Momo kerēme - Standard and brief claims

We know some survivors will want to minimise the amount of time they spend gathering the necessary information and going through the process of making a claim. An apology, perhaps the use of one or two support services, and a financial payment may suffice. An in-depth application may be too traumatising for them and not what they want anyway. Other survivors will want to follow the process as thoroughly as possible and devote whatever time it takes to get full puretumu torowhānui and accountability. The principles of utua kia ea and manaakitia kia tipu call for an approach that is responsive to the different needs of survivors. The puretumu torowhānui scheme should be able to accommodate both needs while still maintaining the integrity of its claims process. We therefore consider it should offer survivors the choice of making a brief or standard claim. The scheme should give survivors clear, accessible information so they can make an informed choice about which is better for them. The legal advice and other support measures already mentioned should help, too, with this decision.

In a standard claim, the scheme would evaluate the claimed abuse and its impact. In a brief claim, the scheme would evaluate the claim, but not consider its impact or factor any impact into its payment calculation. The brief claim would be faster, but the financial payment lower. However, a survivor who made a brief claim would still be able to make a standard claim later on. This would reduce any risk that a survivor might opt for a brief claim only out of financial need.

The scheme will need to give its decision-makers detailed guidance on what amounts to abuse. This guidance should take into account what was generally considered to be acceptable behaviour at the time the abuse happened, or the "standards of the

day". However, in our view the guiding principle for decision-makers should be that, if they consider a survivor was treated in a way that was abusive or neglectful, the decision-makers should grant puretumu torowhānui.

As part of establishing two routes to puretumu torowhānui, we need to consider what standards of proof to apply, what level of involvement organisations and individuals named in claims should have, and what impacts of abuse to take into account when making a decision on a claim. We consider these next.

Taumata hāponotanga - Standard of proof

For our purposes, this legal concept means the degree to which a survivor must prove their claim for the scheme to accept it. The three options we considered were:

- ***balance of probabilities:*** a claim is more likely than not to be true (the standard of proof applied in civil litigation)
- ***reasonable likelihood:*** a claim is not fanciful or remote and is more than merely plausible
- ***plausibility:*** a claim is apparently reasonable or probable without necessarily being so.

In our view, the scheme's starting point for assessing any standard or brief claim should be belief in the survivor. This is consistent with a trauma-informed approach, the principle of manaakitia kia tipu, and the strong desire of many survivors that their account should, as a matter of course, be believed.[925] If nothing is raised during the claims process to give reason to doubt the survivor's account, whether about the abuse, the harm suffered or the link between the two, the scheme should accept the survivor's claim.

Whether a brief or standard claim, the scheme should accept a survivor's account of the abuse if it decides it is reasonably likely the survivor suffered the abuse. We think the reasonable likelihood standard[926] distinguishes the scheme from the courts while still being high enough to protect the scheme's integrity, since setting the standard too low may damage the scheme's credibility and encourage fraudulent claims.

In a standard claim, the scheme should also accept that a survivor suffered or is suffering the harm claimed if it finds this to be reasonably likely. Once the scheme has found abuse and harm in a standard claim, it should accept there is a link between the abuse and harm if it finds that the link is plausible.[927]

In arriving at these views, we took into account that many claims will be made years or even decades after the abuse happened, and that the nature of abuse means documentary records seldom exist, which can make proving meritorious claims difficult. We also heard many compelling, credible accounts of abuse and have taken

into account the fact some abusers have been convicted in the courts or admitted their responsibility. The scheme is not meant to replicate civil litigation, but rather to provide fair redress in keeping with its core values. It is appropriate therefore to have the lower, reasonable likelihood standard of proof in the scheme.

Also, survivors can find it difficult to show a link between abuse and harm because so much time has elapsed between the abuse and the claim. Other damaging life events may have happened along the way, making it still more difficult to prove the link to the civil litigation standard. We consider it appropriate for the scheme to use the lower plausibility standard for deciding on the link between abuse and harm once a survivor has shown they suffered abuse and harm.

Te mana whakautu o ngā wāhi me ngā tāngata i whakaingoatia i roto i ngā kerēme
Right of comment by institutions and individuals named in claims

Organisations and individuals have a fundamental right to comment when decisions are being made that may affect their rights, obligations or interests. This right applies to decisions by the scheme on claims of abuse in the care of a participating institution.[928] Another reason for inviting comment from an institution named in a claim is that the institution would be required to pay or contribute to what the scheme gives the claimant, as well as provide apologies and other forms of puretumu. Yet another reason is that it would minimise the risk of fraud, a matter dealt with later. We also consider it may facilitate genuine and full apologies by institutions, consistent with the values of utua kia ea and te mana tāngata. We heard that currently some institutions hold back from such apologies in the belief that, having not given individuals a chance to comment on allegations, they cannot acknowledge abuse took place or that those individuals were responsible for it – even for the limited purpose of redress. Our suggested approach would eliminate this problem. To be clear, the organisation commenting would not have any interaction with the survivor making the claim, and its comments would go to the scheme assessor handling the claim.

Alleged perpetrators should also have a right to comment on claims in which they are named before the scheme makes its decisions, provided it is done in the way outlined next. This would be consistent with the provisions of the New Zealand Bill of Rights Act 1990.[929]

The right of organisations and individuals to comment on allegations must be balanced against the interests of survivors, and so the following should apply:

- Neither organisations nor individuals should have the right to question survivors

directly, and nor should they meet survivors unless survivors want to.

- The scheme should notify any organisation or individual named in a claim and give them a reasonable opportunity to respond. The organisation or individual may provide information, and raise questions or issues for the scheme to consider and, as appropriate, discuss with the survivor.
- A survivor should also have the right to comment on any information the organisations or individuals provide, if they wish.
- The time within which organisations or individuals must respond should be set out in statute or regulations, and the scheme should be empowered to proceed with decisions if it does not receive comments in time.
- The safeguards to protect disabled survivors still in care should be in place before the scheme notifies any organisation or individual named in a claim, and the scheme should consider whether these safeguards are necessary for any other survivors.

Ngā pānga o ngā hara ka whakaarotia e te kaupapa
Impacts of abuse the scheme will take into account

The Crown, working with survivors, the Māori Collective and the Purapura Ora Collective, should clearly and comprehensively define the impacts of abuse the puretumu torowhānui scheme will take into account when assessing a standard claim (no such assessment being needed for a brief claim). As a starting point, we consider the relevant impacts to include:

- any physical or mental injury or condition (including post-traumatic stress disorder, personality disorders, and depression), whether present at the time of the claim or experienced in the past
- any aggravation of a pre-existing physical or mental injury or condition[930]
- an inability to form or maintain personal relationships or other difficulties with personal relationships, sexual dysfunction, suicidal tendencies, drug, alcohol or other substance addictions, difficulty trusting others, self-blame, eating disorders, hyper-vigilance and anger
- cultural disconnection and impairment
- loss of opportunity, such as an inability (whether chronic or periodic) to get or hold on to jobs, an inability to undertake or complete education or training resulting in underemployment or unemployment, and diminished work capacity.[931]

As stated below, payments made under the scheme should not try to be compensatory. The scheme should not, for example, try to assess lost earnings or compensate for them in a loss of opportunity claim. Instead, it should determine an amount that represents an appropriate acknowledgement of the lost opportunity.

Hātepe kerēme māori - Standard claim process

The puretumu torowhānui scheme should confirm a survivor was at the relevant institution or institutions on the relevant dates. It should also decide whether it was reasonably likely the alleged abuse took place and the claimed harm occurred, and whether it is plausible the abuse caused that harm. The scheme should bear the reasonable costs of any expert report into the survivor's claim. Ordinarily, the survivor and decision-maker on the claim will meet face to face to go over any questions about the claim. However, the scheme may decide not to hold a meeting if it has sufficient information to make a decision and the survivor has no wish to attend a meeting.

Any meeting should, if the survivor wishes it, include representatives of any relevant participating organisation to hear and understand the abuse and its impact on the survivor. If the survivor wants this, the scheme could also invite any alleged or convicted perpetrator. The process could also include restorative processes between the survivor, the participating organisation or organisations and/or the perpetrator, if the participants agree.

The survivor, if their claim is approved, should receive a full range of entitlements, including counselling and other appropriate psychological care, an apology and help accessing support services, along with a higher financial payment than under a brief claim.

Regardless of which type of claim survivors choose to make, the scheme should not ask them to recount their abuse unless it considers this necessary to make a decision on their claim. Survivors should be able to give the scheme any previous accounts of their abuse in support of their claim, including accounts they gave to any listening service or to this inquiry.[932]

Hātepe kerēme poto - Brief claim process

The puretumu torowhānui scheme should confirm the survivor was at the relevant institution or institutions on the relevant dates, and decide whether it is reasonably likely the alleged abuse took place. The scheme would not ordinarily need to meet the survivor, but should offer to meet the survivor if they wish. There would be no meeting or restorative process between the survivor and organisations or individuals named in the claim. If the scheme approves a brief claim, the survivor should be entitled to counselling and other appropriate wellbeing-related services,[933] an

acknowledgment of the abuse and an apology, help to access support services, and a lower financial payment than would be available for a standard claim.

Rerekētanga o tā te manatū aronga whakatere
Difference with ministry's fast-track approach

We have previously discussed the inability of survivors who accepted an offer through the Ministry of Social Development's (now discontinued) fast-track claims process to seek a more thorough review later on. Our recommendations aim to give survivors the flexibility to choose a faster, less intrusive process without giving up the ability to seek a more extensive review at a later date.

Whakataunga ratonga oranga - Decisions on oranga services

We consider the scheme should decide whether to approve a brief claim or standard claim and if so decide how much the financial payment should be. It should assist with apologies, as referred to below. The scheme should also put survivors in contact with a navigator, who can work with them on what they need, including oranga services, to restore their mana.

He tūtohitanga - Recommendations

28. A survivor should have a choice of:

- making a standard claim that takes into account the abuse and its impact
- making a brief claim that takes into account only the abuse
- making a brief claim first, and then a standard claim at a later date.

29. In both claims, the scheme should work with the survivor to work out what is needed to achieve utua kia ea or to teu le vā / tauhi vā.

30. The scheme should, in assessing a standard claim:

- make its starting point that it believes a survivor's account
- consider the reasonable likelihood that abuse took place and the survivor suffered the impact claimed
- consider any impact that is plausibly linked to the abuse
- meet the survivor unless the survivor has no wish to and the scheme has enough information to make a decision on the claim
- invite, if a survivor wishes, representatives of relevant organisations and any named perpetrator to attend any meeting to hear and understand the abuse and its impact on the survivor
- notify organisations and individuals named in a claim and invite them to comment in a way that:

- does not allow them to question the survivor directly
- does allow the survivor to respond to any comment if the survivor wishes

› ensure survivors will be safe from any retribution before notifying organisations and individuals for this purpose, particularly disabled survivors still in care

› have clear times within which organisations and individuals must respond

› proceed with a decision if they fail to respond in time.

31. The scheme should, in assessing a brief claim:

› make its starting point that it believes a survivor's account

› consider the reasonable likelihood that abuse took place

› meet the survivor only if requested.

HUA PURETUMU TOROWHĀNUI
PURETUMU TOROWHĀNUI OUTCOMES

Whakapāha - Apologies

Apologies help many survivors heal and move on with their lives. They can also be a way for survivors to be assured the abuse they suffered will not happen to others. The scheme should facilitate meaningful apologies if survivors so wish (because some don't, their focus being on other forms of redress). We emphasise apologies should be meaningful because many of those that survivors have received can be described, at best, as inadequate. Apologies frequently come in a template form and contain brief, vaguely worded content that minimises, trivialises and sometimes even rationalises the abuse. Some actually fail to squarely acknowledge the abuse, rendering the apology worthless.

Apologies must be tailored to individual survivors' needs. Some want a written apology, some an apology in person, and some both. Many survivors, quite rightly, said apologies should come from a senior-level representative, such as a bishop in the case of a faith-based institution or a chief executive in the case of a State agency. Some want an apology from a person in the church who has a personal relationship with them.

Survivors whose faith and culture were closely entwined often want apologies that respect their particular cultural needs. They might, for example, want an apology to also be given to their families.

Many survivors wanted an apology in combination with a restorative justice process

where they could tell a perpetrator or institution how the abuse had affected them. Being heard and acknowledged in person was an essential element of an apology for such survivors. They might also share their ideas about how to prevent abuse and listen to any measures the institution was taking to do the same thing. We consider this exchange another essential element of an apology.

We consider the scheme should provide guidance to participating institutions on how to make apologies, and that institutions should use suitably trained individuals to make apologies. These individuals should show cultural humility, not just cultural awareness or sensitivity.

He tūtohitanga - Recommendations

32. If desired by a survivor, the scheme should facilitate meaningful acknowledgements and apologies from the responsible institution to the survivor and others affected by abuse in care.

33. Apologies should:

- acknowledge the tūkino or abuse, harm and trauma caused
- accept responsibility for the tūkino
- express regret or remorse for the tūkino
- be made by a person at an appropriate level of authority so the apology is meaningful
- commit to taking all reasonably practicable steps to prevent any recurrence of the tūkino
- be flexible and respond appropriately to the needs and wishes of the individual survivor
- be consistent, where appropriate, with tikanga Māori or with Pacific cultural practices
- come directly from the institution concerned.

34. To give effect to these apology principles, the institution concerned should:

- work with those harmed by the tūkino to apologise in a way that is meaningful to them as part of their wider healing
- ensure the person making the apology has the necessary cultural awareness and humility, and has received training about the nature and impact of abuse and the needs of survivors
- provide information about the steps it is taking or will take to prevent further abuse.

35. The scheme should, where appropriate, give guidance to participating institutions about the form and the delivery of apologies.

36. The institution should, if a survivor wishes, give an apology as part of a culturally based or other restorative process. The scheme should arrange such a process between the survivor (and any whānau if so desired) and the institution (if it agrees to take part) and any perpetrator (if the perpetrator agrees to take part and the survivor agrees to the perpetrator's participation).

Ratonga oranga - Oranga services

The feedback from survivors, researchers and other experts in the field is clear – redress must be tailored to the individual's particular needs and not according to any narrow or standardised view of what it should consist of. Redress will mean different things to different people at different times in their life. It should not concentrate on one aspect, such as financial payments, to the exclusion of any other, but should offer a range of measures aimed at improving physical, mental, emotional, social, economic, spiritual and cultural oranga, or wellbeing, and more generally at restoring the mana of survivors and achieving utua kia ea. We heard often survivors and others say that the new scheme should be viewed holistically and be responsive to their changing needs at different times in their lives.

The needs of whānau may be important too, along with cultural and wider community considerations. Each survivor should be empowered to decide what works best for them.

Survivors said they valued having a choice about what oranga, or wellbeing services would work best for them. They also valued having a choice in how those services were provided, whether in a culturally appropriate way or by whom they were provided. Some Māori wanted Māori only to provide those services. The range of services must necessarily be wide because the impact of abuse manifests in so many areas of survivors' lives. Abuse may contribute to poor educational, employment and social outcomes, greater vulnerability to mental illness or distress, irregular hormone levels and reduced immunity, which can affect physical health.[934] Survivors should be offered whatever measures are necessary that will give effect to the principles of te mana tāngata and manaakitia kia tipu. Providers specialising in working with trauma-affected people would need to deliver these services. The help of a navigator or advocate should be available to survivors who need support deciding what oranga services work best for them, as well as help to access these services. Survivors should have access to oranga services for as long as they need to deal with the tūkino which may mean a long-term relationship with service providers or only

occasional follow-ups with service providers as their needs change. The services would typically be necessary to restore the mana of a survivor.

Āwhinatanga me te tautoko ā-hinengaro - Counselling and psychological care

Poor mental health was one of the most frequently mentioned impacts of abuse mentioned by survivors. Many said daily life was a struggle. They suffered from post-traumatic stress disorder, anxiety, depression, mental distress, regular flashbacks, nightmares, sleeping difficulties and drug and alcohol problems. Counselling services, including specialist drug and alcohol counselling and rongoā Māori, can help enormously. Counsellors who are skilled in working specifically with disabled people, especially people with learning disability, are necessary to meet the needs of these people. Psychotherapy can be another route to mental wellbeing. We consider counselling and other psychological care should be available to survivors. Māori survivors have spoken about the need for Māori-specific services.

Hauora me ngā ratonga hapori - Health and social services

Survivors frequently need to use health and social services. Many suffered serious physical injuries from abuse, such as head injuries, internal injuries and broken bones, that have lifelong consequences. They also developed chronic longer-term medical conditions from abuse, including cardiovascular problems, malnourishment, sexually transmitted diseases, chronic pain, incontinence, migraines, impaired brain functioning and memory loss. Many of these injuries were not treated at the time. Research here and overseas shows those abused in institutional care in childhood suffer poorer health outcomes generally.[935] Access to rongoā Māori should also be an option. Disabled survivors may need specialist support services. Survivors also asked for social services, such as access to secure housing, financial advisory services and community activities. These should also be made available.

Mātauranga me te whai mahi - Education and employment

Survivors frequently said the poor education they received in care had greatly affected their employment and other opportunities. Some received no education, while others had their education interrupted by constant school or care setting changes. Some suffered cognitive impairment or behavioural difficulties as a result of their care, and this also affected their education, and eventually their employment opportunities, too. Some survivors had made deliberate efforts as adults to complete their education or obtain further education, but many found their limited schooling affected their ability to get or keep jobs, with the inevitable financial consequences

Hononga ki te whakapapa me te whānau, hapū, iwi, me ētahi atu hapori hoki
Connecting with whakapapa, whānau, hapū, iwi and other communities

Many Māori were disconnected from their whakapapa and whenua after being placed in care. They became alienated from their spiritual values, language, culture and identity. This alienation can take a toll on a survivor's oranga, including their wairua, or spiritual wellbeing. Many Māori survivors have been unable to reconnect or rebuild relationships with whānau or with their cultural identity. Restoring whakapapa and reconnecting with whānau, hapū and iwi are vital elements of any new scheme for Māori. They should be helped with this, as should non-Māori survivors who also seek restoration of this nature.

Whanake i te mōhiotanga ahurea - Building cultural knowledge

Māori survivors have also found healing in connecting or reconnecting with their cultural knowledge, including mātauranga Māori and reo Māori. We heard a similar desire to connect with culture and language from Pacific survivors. These survivors should receive support to learn their language and more generally build up their cultural knowledge.

Hononga purapura ora - Connecting with survivors

Survivors often spoke of wanting to connect with other survivors because of the opportunities it offered for mutual support and healing. Some discovered they were not the only victim of their perpetrator, and this knowledge was helpful and empowering. Survivor groups contributed to greater knowledge and awareness of shared difficulties – and shared opportunities to heal. As survivor Jim Goodwin noted: "Abuse happens in isolation, healing happens in communities." Survivors should receive help to connect with other survivors.

Tautoko i te whānau me ētahi atu hononga
Support with family and other relationships

For many survivors, disclosing abuse, particularly to their families, has proven traumatic. Many felt shame and anxiety. Many were not believed, some were punished and ostracised. Relationships were further strained if a survivor's family was closely connected to a church. Some survivors, including Pacific people, spoke of how the stigma of abuse had prevented them from disclosing abuse to family members or lodging complaints. Support should be available to help survivors with family and other important relationships after disclosing abuse.

Whāngai i ngā hononga pai - Maintaining healthy relationships

Trusting people or forming close relationships in later life is extremely difficult for many survivors. Many feel estranged from their own families. Abuse has destroyed some relationships. For many survivors, building and maintaining healthy relationships with their family and children is a critical part of their healing. Help should be available for survivors to do this if they wish.

Tautoko ā-hāhi - Pastoral support

Some survivors want nothing to do with the faith-based institution in whose care they were abused, saying these institutions often place undue emphasis on pastoral care at the expense of proper compensation and accountability. Others, however, do want to reconnect and receive pastoral care. We consider the option of pastoral care is a matter for individuals to choose, but the scheme should facilitate this if a survivor wishes.

Hiahia o nāianei tonu - Immediate needs

The range of individual needs of survivors can vary enormously. Some told us how they needed dental work, a battery for their motor scooter, an education for their children and themselves. Small things could often make the biggest difference, although some survivors found offers of material items patronising and insulting. Ultimately, what best helps a survivor can be learned only from a one-on-one conversation. Modest financial assistance should be available to help fund one-off services or purchases that would assist survivors and their whānau.

He tūtohitanga - Recommendations

37. The scheme should enable survivors and, where appropriate, their whānau to access measures to restore mana and oranga, consistent with the principle of manaakitia kia tipu. Survivors should be able to access, aided by an advocate or navigator if necessary, a range of services to meet their unique needs, and these services should include:

- counselling and other psychological care
- rongoā Māori practitioners
- healers
- help with education and employment, healthcare, secure housing, financial advisory services, disability support services and community activities
- help to connect or reconnect with whakapapa, whānau, hapū or iwi, wider community and fellow survivors

- cultural redress and help to build cultural capacity and connection or reconnection with culture, including language learning
- help with family and other important relationships after disclosing abuse
- support to build and maintain healthy relationships with family members.

38. The scheme should be able to offer survivors a choice of modest, one-off redress measures such as small purchases or services that will help them and their whānau to achieve utua kia ea.

39. The scheme should facilitate contact, such as for pastoral support, with a participating institution if a survivor wishes.

Utu pūtea - Financial payments

A financial payment is a component of all existing State and faith-based claims processes, just as it is of all overseas redress schemes. It is a tangible acknowledgement that abuse took place, and it is also a way to help survivors rebuild their lives and support any whānau or family members. Its purpose should be to acknowledge in a meaningful way – not compensate for – abuse and harm. Compensation may be difficult and time-consuming to calculate. It is also the approach taken in civil litigation. Survivors are free to pursue compensation through the courts, but we advise against adopting a compensatory purpose for the scheme, not least because of the time and expense involved.

We have not attempted to set down specific payment amounts in this report because there first needs to be, in our view, broad public discussion about what are fair and reasonable amounts to pay survivors. Such a discussion must involve survivors, other interested parties and the public. In Ireland, a committee made up of individuals from a range of disciplines was established to seek and consider submissions from individuals and organisations before making recommendations on how to determine payments and payment ranges.[936] This may be a useful approach to follow. We make the following comments to guide discussions:

Utu tika - Meaningful payments

The purpose of a standard claim payment should be meaningful recognition of the abuse suffered and its impact (just as the purpose of a brief claim payment should be meaningful recognition of the abuse suffered). That means setting payments at a level that takes into account factors such as the seriousness of the abuse and its impacts on the oranga of the survivor, which may include lost opportunities. The impact of behaviour resulting from a survivor's abuse on later generations may also be a factor to consider, particularly since, from a te ao Māori perspective, individuals belong to hapū and iwi, wider kin groups.

The vulnerability of survivors at the time of their abuse can be another consideration. A young age, a disability, a pre-existing physical or mental condition, abuse at home or in a previous setting, the reason for being placed in care, such as the death of parents or inability of parents to provide care – all these circumstances represent a type of vulnerability because they create a greater need for care – a need that was answered not with care but with abuse, and therefore amounts to a fundamental betrayal.[937]

Payments should also be high enough to make out-of-court redress a meaningful alternative to civil litigation.

Utu o te wā - Current payments

Payments by State and faith-based institutions do not, in our view, amount to meaningful redress. We have already described the considerable range in payments by State agencies – anywhere from $1,000 to $90,000 in the case of the Ministry of Social Development, although the average is a modest $20,000.[938] The Ministry of Health average is $6,000,[939] and the Ministry of Education average is $15,300.[940] These figures are very low compared with payments by overseas schemes. In the Australian National Redress Scheme, the maximum is $A150,000 (NZ$157,000) and the average about $A80,000 (NZ$84,000).[941] In the Canadian Independent Assessment Process for Indian Residential Schools, there was a standard track and a complex track. Under the standard track, a maximum of $C275,000 (NZ$315,000) was payable. Up to $C250,000 (NZD$287,000) could be awarded in addition to that in the complex track for proven actual income loss.[942] The average was about $C91,000(NZ$104,000).[943] In the Irish Residential Institutions redress scheme, the average was about €60,000 (NZ$98,000) and the maximum €300,000 (NZ$488,000), while in the upcoming Redress Scotland scheme, the average is predicted to be about £30,000 (NZ$49,000).[944]

The Ministry of Social Development has guidelines for categorising claims. Category six, the second highest, requires very pronounced and harmful sexual and physical abuse, along with wide-ranging practice failures, and must have happened while the individual was a vulnerable child. Category seven involves all of this, plus exceptional circumstances, such as death or violence. The ministry expects only three per cent and 1.5 per cent of claims respectively to fall into these two categories.[945] It sets average payments for category six at $50,000. Payments for category seven can be above $55,000.[946] We consider these amounts patently insufficient to provide meaningful recognition of the degree of abuse, harm and trauma suffered by qualifying individuals. And of course, still lower payments apply to the remaining 95.5 per cent of claimants.

The Ministry of Education has five payment categories. Category four, the second highest, has a maximum payment of $20,000 for moderate sexual and/or physical

abuse. Considerations include frequency of abuse and degree of harm suffered.[947] Category five has a payment range of $20,000 to $30,000 for serious or extremely serious abuse (although payments can be more than $30,000 with ministerial approval). The Ministry of Health requires severe sexual and/or physical assault and/or a significant unauthorised period of solitary confinement before paying its maximum of $9,000.[948] Payments of this level are also plainly inadequate.

Faith-based institutions have, by comparison, made slightly higher payments. The Catholic Church average is $30,000 (with the highest $152,000), and the Anglican Church's average is around $30,000 (with the highest $100,000).[949] The equivalent figures for The Salvation Army are $29,000 and $91,500.[950] These average payments also are too low to provide meaningful puretumu torowhānui.

Under the new scheme, we would expect payments for standard claims – both the average and the range – to be substantially higher than current State and faith-based payments (see recommendations 44 and 93 below). As for brief claims, we consider those designing the scheme will need to decide whether to pay a single fixed amount, regardless of claimants' circumstances, or set a payment range – which will, of course, be lower than that for a standard claim.

Similar decisions will need to be made for advance payments and common experience payments (see recommendations 44 and 93). A relevant factor for advance payments will be the reasonably low level of claim validation, balanced against the possibility that survivors who qualify for the advance payment may not have the opportunity to apply for other payments. The amount(s) set for any common experience payment will also need to be based on the nature and extent of systemic abuse at the relevant institution.

Tika me te pono - Consistency and transparency

Payments within and between State and faith-based institutions have not been consistent, and nor have their methods of calculating payments been transparent. The scheme needs to be both. One way to achieve this is by using a matrix, or general framework. Payments to survivors would be based on where the abuse fitted within that matrix. Overseas schemes, including in Australia, Canada and Ireland, have used a matrix to promote consistent, transparent decision-making on payments.

Some survivors, however, may prefer a less structured, more individually tailored assessment approach. They may also regard a matrix as drawing arbitrary distinctions between different types of abuse. Certainly that criticism has been levelled against the Australian scheme for making higher payments for penetrative sexual abuse – a maximum of $A150,000 compared with a maximum of $A50,000 for non-penetrative abuse (which includes oral sex). However, giving decision-makers wide discretion could potentially leave the scheme open to inconsistency, which

could lead some survivors to feel their claim had been treated unfairly. A matrix would need to rank different types of abuse – and, importantly, also recognise the gravity of serious, long-term abuse or neglect. It would also need to strike the right balance of detail and discretion so as not to restrict decision-makers. And it could potentially take into account the impact of abuse or neglect. More generally, a matrix would help improve efficiency because it would lead to faster decision-making. We can see advantages to having a matrix, although their use can be controversial. Those designing the scheme will need to consider this and any other options.

Tautoko ā-pūtea - Financial advice

The scheme should make financial advice available to survivors when they receive their payments so they can use the money to their best advantage. They should be encouraged to get this advice, which should be available in ways that suit a wide range of survivors. Survivors who received a payment from Ireland's Residential Institutions Redress Board could also access a free, confidential and independent budgeting advice service.

Kōwhiringa pūtea penapena - Investment fund option

Survivors may wish to pool their financial payments in an investment fund or other financial vehicle as a collective. The Māori Collective and the Purapura Ora Collective will need to seek views on the option of survivors receiving redress as part of a wider survivor settlement that could be invested and managed on behalf of survivors. As well as generating continuing periodic payments to survivors, such investments could enable survivors to provide for future generations.

He utu harangotengote, ki te tarati rānei
Payments in instalments or to a trust

Those designing the puretumu torowhānui scheme should consider whether it should have a power to direct that a payment to a survivor be made in instalments or to a trust. Some overseas schemes had this power, which was considered necessary for some survivors who had addiction or other problems and were at risk of spending a lump sum ill-advisedly. On the other hand, some survivors considered they alone should decide what they did with their payment (with access to financial advisors if they wish).

Utu o mua atu - Previous payments

The scheme should deduct any previous payments for abuse, whether from a State or faith-based institution, an indirect State care provider, ACC or the courts, when determining monetary payments. This will entail some administrative work, but it is essential to ensure fairness between survivors' payments. If the scheme decides to index these earlier payments, that is, convert their value into today's dollars, it

needs to take care to explain this early on to survivors and in a way they understand. Working out the effect of past payments on a forthcoming payment should be done in consultation with survivors.

Pānga ki ētahi atu whakawhiwhinga - Effect on other entitlements

Some survivors receive government entitlements for reasons that are distinct from their abuse in care claim. A payment by the scheme should not adversely affect a survivor's financial position. It should not count as income. Other than as explained below in relation to ACC, it should not reduce or limit any government entitlements, such as welfare and unemployment benefits, disability benefits and disability support services.

Arotake o ngā utu kaupapa - Review of scheme payments

From time to time, the scheme should review payment amounts to take into account such factors as inflation or relevant awards by the courts.

He tūtohitanga - Recommendations

40. Financial payments by the puretumu torowhānui scheme should provide meaningful recognition of abuse and where relevant impact, but not compensation for harm or loss.

41. The scheme should, in determining the size of a financial payment, take into account:

- the seriousness of the tūkino inflicted and suffered
- factors that increased a person's risk of abuse when in care or harm from the abuse, including young age, disability, mental health condition and previous abuse. Such factors may be seen as aggravating the seriousness of the abuse
- the impact of the abuse on the oranga of the survivor, including lost opportunities and, where relevant, intergenerational impact
- the principles underpinning the system including manaakitia kia tipu
- the scheme's standards of proof
- payments to other survivors to ensure consistency and fairness
- any other payments a survivor may have received for abuse in care, such as from previous redress processes, court cases or settlements
- the need for payments to:
  - be sufficiently high to make the scheme a meaningful alternative to civil litigation
  - compare favourably with those made by overseas abuse in care schemes.

42. The scheme's financial payments should not adversely affect survivors' financial position and should not count as income. Other than for ACC purposes, the financial payments should not reduce or limit any entitlements to financial support from the State, including welfare and unemployment benefits, disability benefits and disability support services.

43. The scheme should periodically review the financial payments it makes and increase them as necessary to ensure:

- payments continue to provide appropriate value to survivors, taking into account matters such as changes in the consumer price index and relevant awards by the courts
- equity between survivors.

Utu wheako māori - Common experience payment

The puretumu torowhānui scheme should offer the option of a payment to individuals who were at an institution or other care setting where systemic abuse (including systemic neglect) took place during a particular time period. Any survivor who was there during that time should be able to apply to the scheme for what we call a common experience payment.[951] This set amount should be calculated so it provides meaningful recognition of the abuse or neglect suffered.

A survivor would not have to prove they were abused. Instead, the scheme would accept the survivor suffered abuse because they were at the institution or care setting at the relevant time. This would lessen the burden on some survivors, particularly disabled survivors, who might struggle to provide evidence they were abused or neglected and go through an individual assessment. Offering this type of payment should enable the scheme to help more survivors.

In the same way survivors who make a brief claim could later change their mind and make a standard claim, so survivors who received a common experience payment could later opt to make a brief or standard claim. In such a situation, the common experience payment would be deducted from the brief or standard claim payment.

Similarly, a survivor who received a brief or standard claim payment and later learned an institution where they were placed had been deemed a place of systemic abuse or neglect could apply for a common experience payment. In such a situation, the scheme would take the previous payment into account when deciding whether to make any additional payment.

The scheme would need to develop criteria for determining whether systemic abuse or neglect had taken place in institutions or settings. The criteria should be based

on findings in our reports and evidence gathered from claims the scheme receives. Criteria could include such things as operational policies in place at the time, the nature of an institution's management, factors that actively or passively enabled abuse to go on unchallenged, and the pervasiveness of the abuse or neglect.

Detailed knowledge of the institution or setting during the time in question, built up through an investigation or other fair process, would be necessary before concluding that a placement there at that time warranted a common experience payment. There are two reasons for requiring a high level of certainty that systemic abuse or neglect took place. One is that such a designation may imply many people who worked there were likely to be perpetrators of abuse or neglect – a serious implication with potentially serious consequences for the reputation and wellbeing of the individuals concerned, as well as for their whānau.[952] The other reason is to preserve the integrity of the scheme.

The scheme should be able to recommend other agencies investigate a particular institution or setting to determine whether survivors placed there should receive a common experience payment. The scheme could make this recommendation based on anything it learns from its work, including its own monitoring of claims. Agencies could also initiate these investigations themselves, which should be carried out by investigators independent of the institution or setting under investigation. We consider other agencies would be better placed or have the required resources to carry out or commission these investigations and report back to the scheme, which would then determine whether to make a common experience payment available. To undertake these investigations itself would, in our view, divert the scheme from its core purpose of deciding on claims.

After the scheme deems an institution or setting to be a place where systemic abuse or neglect took place, it should take active steps to identify and reach as many qualifying survivors as possible. It should tailor these efforts to the specific needs of the group of survivors it has identified.

He tūtohitanga - Recommendations

44. Any survivor placed in an institution or care setting that the puretumu torowhānui scheme determines was a place of systemic abuse or neglect should be able to apply for a common experience payment of a set amount. The scheme should:

- develop criteria to determine what institutions or settings, if any, were places of systemic abuse that would make a common experience payment justified, using the findings of this inquiry's reports and evidence gathered from claims the scheme receives

- actively reach out to ensure as many eligible survivors as possible receive a common experience payment once an institution or setting is identified as a place of systemic abuse or neglect
- tailor efforts to contact qualifying survivors to the specific needs of those identified
- take into account any other payments a survivor has received for abuse in care, such as payments from previous redress processes, court cases and settlements.

45. The scheme should have the power to recommend an investigation into whether systemic abuse or neglect occurred at an institution or other care setting for the purposes of determining whether there should be a common experience payment for people who were in that institution or care setting.

Pārongo hua kerēme - Record of claim outcomes

We consider the puretumu torowhānui scheme should give survivors a written record of its decision on their claim, including the reasons for reaching the decision. This accords with the value of transparency. Assuming a decision is in a survivor's favour, such a record is an official validation that the survivor suffered abuse in care. If the scheme doesn't accept a survivor's claim or doesn't offer the redress the survivor expected, the record should help the survivor understand why the scheme made the decision it did. The scheme should be required to give the reasons for decisions because it encourages good decision-making and will be useful if a survivor or institution seeks a review of a decision.

The record of the scheme's decision should be in accordance with the confidentiality requirements set out at recommendations 55 and 56. The record should be in plain English or, if a survivor wishes, in reo Māori or New Zealand Sign Language. The scheme should give assistance to any survivor who needs help to understand the record.

He tūtohitanga - Recommendations

46. The scheme should give survivors a written record of its decision, which should set out the tūkino, or abuse it accepts took place and where relevant the impact it had (or if not accepted why the scheme does not accept the claim), along with the reasons for its decision. The record should be in plain language and, if preferred, in reo Māori or New Zealand Sign Language. The scheme should make available assistance as necessary to help survivors to understand the record.

Tuku mana me te hua ā-ture o ngā whakatau
Waivers and legal effect of decisions

He tuku - Waiver

A waiver, for our purposes, is a legally binding undertaking not to take court action in return for a settlement. The overseas schemes we reviewed commonly require survivors who accept redress to waive their right to take court action or any other form of civil action against any institution allegedly responsible for their abuse.[953] State and faith-based institutions in this country usually make a waiver a requirement of their settlement offers. Waivers are also commonly required as part of settling civil disputes.

We do not favour a waiver requirement. The puretumu torowhānui scheme is designed to fulfil a restorative, rather than adversarial, function, but not an accountability function to the same degree that the courts provide. It will also not provide compensation. Survivors should not have to give away the right to seek accountability and compensation in return for redress from the scheme. If the scheme functions as intended, the likelihood of people also seeking redress through the courts is likely to be low, particularly since we have recommended any redress from the scheme should be taken into account in a court award to prevent "double-dipping".[954] For survivors, requiring a waiver may cast doubt on the genuineness of institutions' apologies because it could suggest they made them only as a means of avoiding liability for the abuse. Finally, a waiver affecting a claim involving credible allegations of torture may be inconsistent with a survivor's rights under human rights law.[955]

Some institutions argued that failing to require a waiver would leave open the possibility of future court action, which would create uncertainty. They also said it might affect what they could say to the scheme and to survivors, and might discourage voluntary participation in the scheme. However, we consider our recommendations on the legal effect of the scheme's findings and decisions will address these concerns. Even so, we consider the two-year review of the scheme we recommend below should examine whether the absence of a waiver has caused any significant difficulties.

Pānga ture o ngā kitenga me ngā whakataunga o te kaupapa
Legal effect of scheme's findings and decisions

A scheme decision should have no legal effect on any institution or individual named in a claim. Since institutions and individuals would not have the same rights as they enjoy in the courts (such as the right to cross-examine the survivor or a right of appeal against decisions to the courts), and because the standards of proof are lower

than those in civil and criminal cases, the scheme's decisions should not amount to a finding of civil or criminal liability or fault for any named institution or individual. As such, the possibility of court action should not prevent institutions from making a full apology or in any other way participating fully in the work of the scheme. If a survivor's court case were successful, the court could deduct any payment from the scheme from any compensation or other payment the court ordered.

As we say in relation to recommendation 55, all information given to the scheme, along with its findings, should not be available to, or admissible in, any other investigation or proceeding (subject to any referrals process). Because of this, and because the scheme's decisions will not have any legal effect outside of the scheme, its processes should generally be able to run in parallel to any other investigation or proceeding, such as a criminal, civil or disciplinary case against a named individual.

He tūtohitanga - Recommendations

47. Accepting puretumu torowhānui from the scheme should not:

- prevent a survivor from taking civil proceedings or making a complaint for abuse and harm, although the redress should be taken into account in any successful civil proceedings
- affect any rights a survivor may have against an individual allegedly responsible for the abuse or affect any rights regarding abuse or harm not covered by the puretumu torowhānui from the scheme
- prevent a survivor from making a complaint to Police, a professional or faith-based disciplinary body or an employer of an alleged or known perpetrator.

48. A scheme decision should have no legal effect on any organisation or individual named in a claim, other than for the purposes of the scheme.

Utunga o Te Kaporeihana Āwhina Hunga Whara - ACC entitlements

Survivors should be able to apply to the scheme and ACC. However, the scheme and ACC should take into account any payments or other entitlements provided or facilitated by the other.[956] That will assist in promoting equity between survivors.

While this will add some work for the scheme's administration, as discussed in part 2.6 most survivors do not receive payments from ACC. Most survivors with ACC cover only receive counselling. Therefore, other than in a relatively limited number of cases, the scheme should not have to take into account ACC payments. Any counselling or other rehabilitation entitlements provided by ACC should be considered by the navigators and other service providers who will assist survivors with accessing oranga services following an approval by the scheme of their claim.

One of the other options we considered was for ACC to take over redress supports for all survivors. On the plus side, ACC would have administrative structures in place to do the job, although it might still have to set up a specialist division to work with survivors, and the legislative changes required would be significant. There is also a question about whether survivors would trust a government organisation such as ACC. The other option was for the scheme to assess and provide ACC entitlements to eligible survivors, but this would increase the complexity of the scheme, duplicate processes and generally be costly and inefficient.

He tūtohitanga - Recommendations

49. Survivors should be able to make a claim to both the puretumu torowhānui scheme and ACC. Any payments or services provided or facilitated by one should be taken into account by the other.

Te ara whakatinana - Establishment and operational methods

The puretumu torowhānui scheme needs to operate on a clear and legally defined footing so it knows precisely what its powers and responsibilities are, and so survivors and institutions can challenge the scheme through reviews and the courts if it exceeds those powers or fails in those responsibilities. The best way to achieve this, in our view, is through enabling legislation and regulations. Eligibility criteria and entitlements should be spelt out, and the Government should consider setting out the timeframes for the scheme to make decisions.

The scheme should operate in a way that promotes confidence in its work and trust among survivors, many of whom are deeply distrustful and suspicious of the State, institutions and authority generally. We have already explained in detail the lack of transparency in current redress processes, the inconsistency in outcomes between and within the various redress processes, the lack of information about eligibility criteria, how decisions are made and entitlements, and also the delays and lack of updates. The scheme must show how things can be done differently, and in accordance with its core values.

To do that, it must have, from the outset, sufficient resources, the right information technology and trained, motivated staff, as well as the necessary powers to do its job properly. A comparison between the number of claims resolved by the Ministry of Social Development and the Canadian scheme, the Independent Assessment Process, illustrates the difference resourcing can make. The ministry told us it had closed 1,942 claims out of a total of 4,177 in the 17 years between 2003 and 2020,[957] whereas the Canadian scheme[958] had resolved more than 4,000 claims each year in five of the years it operated, and this was despite its claims process involving

adjudicated hearings.[959] The stark difference can only be the result of much better resourcing and organisation, making it vital the scheme is resourced to succeed.

We expect the organisations that join the scheme will co-operate fully with its work, but if they do not, the scheme should have the power to require information from them. This power should not, in our view, apply to survivors, although the scheme should make clear to survivors who do not supply the information it requests that their failure to co-operate may affect the outcome of their claim.

Some overseas schemes said applications involving numerous institutions could be time-consuming to assess because privacy laws meant information provided by one institution could not necessarily be shared with another, forcing them into the laborious task of redacting information before passing it on. This is an unnecessary administrative task that delays decisions and drains efficiency. For this reason, we consider the scheme should have the power to forward information to survivors and other relevant agencies without any redactions when the scheme reasonably considers this necessary to fulfil its functions. In deciding whether to redact, the scheme should consider any significant privacy interests in the particular information against matters such as the need for survivors and participating institutions to have complete information relevant to a claim, the resources required to redact, and the high importance of the scheme making timely decisions.

There should also be a way for survivors to make complaints about the scheme.

He tūtohitanga - Recommendations

50. The Government should legislate to establish the puretumu torowhānui scheme and should set out in this legislation, or in regulations, eligibility criteria and entitlements. It should also consider setting out in regulations the timeframes for the scheme to make decisions.

51. The puretumu torowhānui scheme should:

- make decisions that are fair, equitable, predictable, timely, transparent and consistent from survivor to survivor and from year to year
- be adequately resourced, including having information technology systems, so it can make good, timely decisions
- have an oversight body to consider complaints about the scheme.

52. The puretumu torowhānui scheme should have the power to:

- require any organisation that joins the scheme and any other relevant body to give it information
- give information to survivors, organisations in the scheme and any other relevant body without redactions, provided the scheme reasonably considers this is necessary to fulfil its functions.

Arotake whakataunga - Reviewing decisions

Ngā arotake - Reviews

A right of review is inherent in the justice system and builds confidence in processes and corrects mistakes. It should apply to scheme decisions, particularly given the lack of such an avenue for most survivors to date. The right of review should be for both survivors and institutions. It should apply to brief and standard claims (including those continued by a family member of a deceased survivor and any decision involving a payment by instalments to a survivor or a lump sum payment to a trust) and to decisions on interim, advance and common experience payments. Those designing the puretumu torowhānui scheme should consider whether any deadline should apply to seeking a review. The scheme should also be able to review a decision if information comes to light that would have had a significant effect on the outcome of the decision. It should be able to do this of its own accord or at the request of a survivor or institution.

Some overseas schemes allow reviews by institutions, and some don't.[960] Such reviews can delay outcomes and be stressful for survivors, although they encourage sound decision-making. We favour a right of review for institutions because it allows errors to be found without having to go to court. Alleged perpetrators should not have a right of review because it could traumatise survivors, cause delay and make the scheme more adversarial in nature. Also, alleged perpetrators do not have to make financial contributions to the scheme.

Any review brought by a survivor or other applicant (for example a family member on a survivor's behalf) should not result in a less favourable outcome than the original decision. Such an approach would remove any risk to survivors and avoid discouraging them from seeking a review. It would also be survivor-focused and consistent with the scheme's aim of moving away from an adversarial process.

Those designing the puretumu torowhānui scheme should determine who conducts reviews, for example, scheme decision-makers or independent reviewers. Whoever it is should not have made the original decision.[961]

Ngā arotake ā-Kooti - Court reviews

We consider survivors and institutions should have a right to seek judicial review of the puretumu torowhānui scheme decisions, but only after they have used the right of review they have in the scheme. There should not be a general right of appeal to the courts on the substance of the decision. To allow a general right of appeal could result in drawn-out litigation and would generally run contrary to the scheme's function of providing timely and final decisions in a non-adversarial way. The right of judicial review already exists and promotes good decision-making. Alleged perpetrators should be able to exercise their right to seek a judicial review because this would allow them for example to correct any material errors of fact, procedure or law.

He tūtohitanga - Recommendations

53. Survivors and institutions should be able to ask for a review of decisions by the puretumu torowhānui scheme. A review brought by or on behalf of a survivor should not result in a decision less favourable to the survivor than the original one.

54. A scheme decision should be open to review, including by the scheme of its own accord, if more information comes to light that is likely to have had a significant effect on the outcome of the decision.

Tūmataiti - Confidentiality

We consider the puretumu torowhānui scheme's records, including its decisions on claims, should be confidential. The scheme will handle large volumes of highly confidential and sensitive information, especially survivor accounts of their abuse, which are likely to contain the names of alleged perpetrators and institutions where the abuse took place. In making decisions about claims, the scheme will have to disclose some of this information, such as to individuals named as perpetrators and relevant institutions. However, the scheme should treat such information as confidential and should not share it more than is necessary.

The puretumu torowhānui scheme must be clear from the outset how it will manage, store and disclose the information it holds – and eventually dispose of it as well – to ensure it remains safe. The scheme must also ensure survivors are clear about what the rules are. Failing to do so is likely to jeopardise survivors' trust in the scheme and discourage them from making claims.[962]

Nothing, in our view, prevents a survivor who has accepted a scheme offer from disclosing any details of the settlement to a third party, including the identity of the institution and alleged perpetrator. However, the scheme should redact any details that might identify any alleged perpetrator from the record of its decisions. It should

also not disclose any information to any organisation not in the scheme without a survivor's consent unless it first redacts any information that might identify any survivor, subject to any exceptions established by law. Nor should it, except in accordance with its referrals process, disclose any information to any organisation or person capable of identifying any alleged perpetrator, subject to any exceptions established by law. Subject to what we say below about referrals, all information given to the scheme, and its findings, should not be available to, or admissible in, any other investigation or proceeding, whether criminal, civil or disciplinary. Finally, the scheme should clearly explain its confidentiality rules and obligations to institutions in the scheme.

Taunakitanga - Referrals

The puretumu torowhānui scheme should help third parties, such as Police, disciplinary bodies and employers, to identify and investigate alleged perpetrators, and in so doing help to hold perpetrators to account, possibly uncover other perpetrators and prevent abuse. Many survivors have approached our inquiry in large part because they wished to prevent what happened to them from happening to others. Some, however, are likely not to want the scheme to report their abuse to Police, go through a criminal trial or take part in a disciplinary process. They may, for example, fear for their safety when an alleged perpetrator hears of the allegations, or, if they are in prison, they may fear that fellow prisoners will regard them as co-operating with Police, which can invite retribution. Having felt disempowered for much of their life, it is essential the scheme does not take survivors' consent for granted. The scheme needs to be respectful of survivors' wishes and find a way to involve them in referrals to third parties. A case in 2018 involving the Ministry of Social Development and other agencies established that there were constraints on the agencies handing over information about survivors because of the great vulnerability of these individuals, even though that might be permitted by legislation such as the Privacy Act 1993.[963]

The scheme should actively involve survivors and interested organisations in developing clear, consistent processes for determining when to make a referral and what information to include in a referral. We consider the only information the scheme is likely to refer is a survivor's allegations, which would be consistent with promoting confidentiality and keeping redress and other processes separate. The scheme should seek views on whether and how to make a referral if a survivor doesn't want to have any contact with police or other agencies. It should also consider whether to make anonymous referrals containing details of the alleged abuse and alleged perpetrator but not the survivor's identity, as happens in Australia.[964] These processes will need to be in place before the scheme begins. There should be a strong consensus about these processes to minimise any need for the

courts to become involved. A risk assessment may be a prudent step before making a referral, as occurs in Australia, especially if a survivor is still in care and the alleged perpetrator works or is otherwise in the same care setting. In such a situation, the safeguard checks described previously should take place.

He tūtohitanga - Recommendations

55. The puretumu torowhānui scheme should keep confidential any information it receives, and should:

- clearly set out and explain any exceptions to this obligation
- not disclose any information to any organisation not in the scheme without a survivor's consent unless:
  - the disclosure is in accordance with its referrals process
  - the information is redacted to remove anything that could identify a survivor, subject to any exceptions established by law
- clearly tell survivors how it manages their records, including who can access them and when, and how long it will keep them.

56. The puretumu torowhānui scheme should redact any alleged perpetrator's name and any other identifying details from its decisions.

57. The puretumu torowhānui scheme should establish consistent processes for the referral of allegations of abuse to police, employers of alleged perpetrators, professional or faith-based disciplinary bodies and other relevant agencies. Safeguards against neglect or retribution of disabled survivors in care or other survivors should be built into these processes.

58. A survivor should be able to disclose to anybody the puretumu torowhānui they received, the scheme's decision and the identity of the institution concerned. The survivor should also, subject to law, continue to be able to disclose details of the abuse to any person as they see fit.

Whakapūrongo - Reporting

Awareness of abuse in care and its consequences has been relatively low until recent times. One result has been that survivors often feel alone and find it hard to disclose abuse. Limited public understanding of abuse in care has enabled institutions and perpetrators to evade full accountability. Public awareness of the scale of abuse in care among Māori, Pacific, Deaf and disabled people has been particularly low, in part because care institutions have kept such poor ethnicity and disability data. This is changing, however, and the puretumu torowhānui scheme should play its part in

building public understanding of the issue. One way to do this is to keep survivors and the public informed about its work by reporting on a range of key data at least once a year. This will also provide a yardstick against which to measure the scheme's performance.

He tūtohitanga - Recommendations

59. The puretumu torowhānui scheme should publish a report at least yearly with statistics on:

- the number of claims made, the number of claims relating to each participating institution, and the types of abuse or neglect involved
- a breakdown of its decisions on these claims
- the average time for making a decision
- the size and range of financial payments
- the types and frequency of other entitlements made available
- the age, iwi affiliation, ethnicity – including specific Pacific ethnicity, gender, and any disability of survivors who made the claims
- the number of reviews sought and the decisions made on them.

Arotake motuhake - Independent reviews

The Crown should designate an independent agency to review the puretumu torowhānui scheme's operation and to evaluate how it works and recommend any improvements to ensure it offers a high-quality service. Such reviews of overseas schemes have in some cases recommended wide-ranging changes.[965] Survivors and their communities should be actively involved in the reviews, and any review panel that is established should have strong survivor representation.

He tūtohitanga - Recommendations

60. The Crown should designate an independent agency to review all aspects of the puretumu torowhānui scheme's operations after it has been running for two years, and thereafter at periodic intervals, to ensure continuous improvement in its services. The review should include survivors and should give effect to the Crown's obligations under te Tiriti o Waitangi.

Mana pūrongo - Reporting powers

The establishment of the puretumu torowhānui scheme offers an opportunity for the first time to collect and analyse data about survivors and abuse in care in a

systematic and wide-ranging way. To date, relevant agencies and institutions have collected data separately about survivors, and none has looked systematically at survivors' ethnicity, demographic profile, any disability, the circumstances of the alleged abuse, the location of alleged perpetrators and a host of other useful data contained within official records. The scheme will inevitably collect a significant amount of information on survivors and abuse in care generally, and this will put it in a strong position to identify systemic issues – including any institutions in which abuse was common or widespread, perpetrators who moved from institution to institution, and types of survivors particularly affected by abuse – and make authoritative comment on how systemic issues have arisen and what should be done to avoid a repetition of past mistakes.

We heard from survivors and experts that any puretumu torowhānui scheme should have this function because many survivors seek redress to ensure the systemic issues that led to abuse were identified and addressed. We also heard that this type of function should be independent of the State or other body responsible for care and protection. The scheme will have that independence.

We therefore consider the scheme should have powers to report on any systemic issues it identifies and make recommendations to relevant agencies, including monitoring agencies, about what should be done in response. The scheme should also have the power to require agencies to report back on what they have done in response to its recommendations, and for all of this to be made public to encourage accountability and action. As we have noted earlier, the scheme should be able to recommend an investigation into a particular institution or care setting to determine whether it should make a common experience payment to those placed in such an institution or setting. Finally, the scheme should provide information and any recommendations for reform to the Crown. All of this will help reform the provision of care, including safety, investigation and complaint processes.

He tūtohitanga - Recommendations

61. The puretumu torowhānui scheme should have the power to:

- report to care providers or any agency, including monitoring agencies, on information it receives about systemic issues and make recommendations on how to respond to these issues including for the purposes of determining a common experience payment
- require care providers or agencies to report on actions they have taken in response to its recommendations
- make recommendations and responses public

- provide information and recommendations to the Crown on areas of reform relevant to abuse in care, including health, disability services, adoption, Oranga Tamariki, ACC, education and housing.

TUKUTANGA PŪTEA, RATONGA HOKI
FUNDING AND SERVICE DELIVERY

Whakaritenga pūtea - Funding arrangements

We conducted an analysis of whether the Crown alone should fund the scheme or the institutions responsible for the abuse should fund it. In the end, we concluded the best option would be for the Crown to assume full responsibility for funding the scheme upfront. The Crown would meet the cost of contributions from State agencies and cover those from indirect State care providers and faith-based institutions. This would ensure there was no delay between a decision on a claim and a payment to a survivor, even if the responsible institution no longer existed, had no funds to pay or was not in the scheme.[966] The Crown or the scheme would then obtain contributions from institutions and indirect State care providers on a case-by-case basis.

Each participating organisation would obviously have to reimburse the Crown or the scheme for financial payments awarded for abuse in its care – provided, of course, it was the only organisation named in the claim. Those designing the puretumu torowhānui scheme will need to decide how to apportion financial payments awarded for abuse in more than one institution. They will also need to determine how – and how often – to collect this money and also how to apportion the scheme's administration costs and the costs of oranga services.

From an administrative perspective, it would be much simpler if the Crown were to fully fund the scheme, but many survivors, rightly in our view, said institutions responsible for abuse should face the consequences of their actions or inactions, and a very tangible way to do this was by making them pay for survivors' puretumu torowhānui. This would also avoid the public having to pay for the wrongdoing of non-government institutions.

In Australia's National Redress Scheme, institutions' contributions are required only after each claim has been decided. This can be a drawn-out and administratively complex process, particularly if a claim involves more than one institution. In Ireland, religious institutions were required to make their total contributions upfront in exchange for indemnity from civil liability. However, the number of survivors who made claims was a lot higher than estimated, with the result that taxpayers had to fund the difference.

For this reason, we consider contributions should not be required at the outset. The open-ended nature of the scheme and the difficulty in estimating total costs make this approach inaccurate and risky. Contributions on a regular basis would entail higher administration costs but also greater accuracy and certainty. This approach would also ultimately best meet the needs of survivors.

Āwhinatanga nō ngā rōpū atawhai - Contributions from charities

Many faith-based institutions are charities whose constitution or trust deed may not permit financial contributions to a new puretumu torowhānui scheme, even if those institutions wish to contribute financially to it. The same may apply to some indirect State care providers. And even if the constitution or trust deed permits contributions, trustees or board members may not deem it in a charity's best interests to do so because they do not know the full extent of their liability – that is, how long they will have to go on making contributions and how big those contributions will be – and they may decide such contributions threaten the charity's long-term viability. In these circumstances, trustees or board members may be unwilling to make contributions, despite accepting the charity has a moral obligation to provide redress to those abused while in its care. In Scotland, legislation was passed to treat charities' financial contributions to its redress scheme as consistent with their purpose and constitution.[967] Ireland adopted a similar approach.[968] The same could be considered here.

He tūtohitanga - Recommendations

62. The Crown should have overall responsibility for funding the puretumu torowhānui scheme so survivors receive financial payments in a timely manner.

63. Faith-based institutions and indirect State care providers should contribute to the scheme's funding.

64. Those designing the puretumu torowhānui scheme should determine how the Crown or the scheme should collect financial payments awarded against individual faith-based institutions and indirect State care providers and how to apportion the scheme's costs including the costs of oranga services.

Tukutanga ratonga urupare - Responsive service delivery

The quality, suitability and accessibility of the oranga services that survivors use, both when making a claim and as part of their puretumu torowhānui, will be a significant factor in how well survivors recover from abuse and rebuild their lives. Many survivors will need face-to-face interaction with the puretumu torowhānui scheme and support services. We consider the scheme should, in facilitating support

services for survivors, give preference to service providers with the knowledge and skills needed to interact with survivors, particularly Māori, Pacific, Deaf and disabled survivors. It should ensure oranga services available to survivors include services run by Māori, particularly since by-Māori, for-Māori services are an expression of tino rangatiratanga. There should also be Pacific service providers, and other service providers with Māori, Pacific and disabled people among their workforces.

The scheme itself will require a skilled and diverse workforce, including people with lived experience of the challenges survivors face. It should ensure its workforce includes Māori, Pacific, Deaf and disabled people, and staff members should be trained in dealing with survivors so interactions are safe, welcoming and culturally appropriate. Staff at all points of contact with survivors will need a sound understanding of the impact of trauma, including historical and culture-specific trauma.

Trauma-trained professionals are in short supply.[969] Psychologists to help with mental health and addiction issues, particularly those from Māori and Pacific communities, are also scarce,[970] even though the Government Inquiry into Mental Health and Addiction recommended the Government significantly increase access to publicly funded mental health and addiction services.[971]

The Crown will need to develop a workforce change strategy as well as provide resourcing for training and skills development to ensure a suitably qualified workforce is available to support survivors in a trauma-informed and culturally responsive way. A strategy will be needed to develop these and other relevant skills among survivors, Māori, Pacific peoples and disabled people.

The scheme is one way the Crown will give disabled survivors access to justice. But this can only happen if disabled survivors have effective and equitable access to the scheme on an equal basis. For some disabled survivors, this will require access to supports and other measures. Those doing scheme-related work should have training on the rights of disabled people. Disabled people should be among those developing and delivering this training.

He tūtohitanga - Recommendations

65. The puretumu torowhānui scheme and any other funders should encourage the provision of support services locally by giving preference to collectives within communities in the design and delivery of support services, recognising the specific obligations under te Tiriti o Waitangi for Māori, while the Crown should properly resource local services, which may include:

- extra resourcing to service providers, such as holistic Whānau Ora health providers or iwi, to increase their capability and capacity
- commissioning new support services, particularly where gaps have been identified.

66. The Crown and the puretumu torowhānui scheme should ensure sufficiently skilled workforces are available to provide oranga services to survivors, and that all those who have contact with survivors, including scheme staff, advocates, navigators and lawyers, are trauma-informed and culturally responsive. This will require the Crown to have a transformative workforce change strategy and resourcing training and workforce skill development, including:

- providing incentives and additional and ongoing skills training to workforces
- developing and making mandatory training for those entering relevant workforces
- ensuring workforces receive awareness raising and training on the rights of disabled people, in particular:
  - disabled people's rights to access to justice under article 13 of the United Nations Convention on the Rights of Persons with Disabilities
  - the inclusion of disabled people in the design and provision of this training
- a strategy for developing relevant skills among survivors and Māori, Pacific and disabled people to help relevant workforces to relate appropriately to survivors.

Arotake i ngā roopu whai oranga - Reviews of oranga services

We have already described the types of oranga services the scheme would expect to offer to survivors. What is not clear is how many of these services are, in fact, available, whether there are gaps or overlaps in different parts of the country, the extent to which survivors are already using them, whether there are any deficiencies in these services and what it would cost to plug any gaps in the current range.

The Crown Response to the Abuse in Care Royal Commission of Inquiry, the co-ordinating body for the State agencies taking part in our inquiry, said none of its member agencies had examined the extent to which survivors used existing oranga services, and none had conducted any recent stocktake of such services. The Government runs a searchable online database of services or programmes available to help families. We found it contained about 5,700 providers of potentially relevant services. However, we also found another 300 not listed on the directory during a preliminary search.

An immediate review or stocktake is plainly needed to get a picture of what is available, and also whether there is already high demand for these services. The report of the Government Inquiry into Mental Health and Addiction suggests this may be so, at least in the mental health area.[972] It found many people with common problems such as stress, depression, anxiety, trauma and substance abuse had few options for help through the public health system.

The Crown should undertake such a stocktake, which should also look at any eligibility criteria, costs, the training and qualifications of those providing the services, and any extra training required to ensure the services offer consistently high-quality, trauma-informed support. In addition, it should consider questions such as regional disparities, delays, barriers to access, whether Māori, Pacific peoples and disabled people experience any difficulty with them. Following the Crown's stocktake, the Māori Collective and the Purapura Ora Collective should commission an expert review of these services to:

- evaluate whether there are gaps in services and what improvements are needed to existing services, including to their workforces
- evaluate how well these services meet the needs of survivors, particularly Māori, Pacific peoples and disabled people, and what if any extra services or improvements in services are needed
- determine how many survivors are likely to need these services and for how long
- evaluate whether:
  - any extra funding and training will be needed to ensure enough services are Māori-led
  - front-line staff are able to provide culturally appropriate support and have a clear understanding of Māori models of wellbeing
  - there is appropriate training for providers about disabled people and information about the services is accessible to disabled people
  - services are accessible to deaf people
  - service providers understand the cultural needs of Pacific survivors, particularly in seeking out and using their services

- recommend:
  - any changes needed to make services suitable for survivors
  - any extra services needed to meet best-practice standards, be survivor-focused and trauma-informed, and communicate effectively with other services for survivors
  - whether priority needs to be given to survivors in accessing these services
- recommend what monitoring and review arrangements should be put in place to help ensure services remain high-quality.

The review should also consider whether to establish a dedicated fund to pay for any extra services or improvement to services and to cover monitoring and review costs.

Both reviews should be completed well in advance of final decisions about the shape of the scheme because it is essential these oranga services, which will be an integral part of most survivors' puretumu torowhānui packages, are in place by the time the scheme begins operating.

He tūtohitanga - Recommendations

67. The Crown should immediately commission a stocktake of available oranga services for survivors, including counselling and other psychological care, educational services and vocational services.

68. The Māori Collective, in conjunction with the Purapura Ora Collective, should commission an expert review to evaluate the services identified in the stocktake and make recommendations on any changes or extra services needed. This should be completed well in advance of final decisions on the scheme.

69. The Crown should consider establishing a dedicated fund for any extra services or improvements to services recommended by the expert review, along with any independent monitoring and review arrangements.

Ara kōrero - Communication channels

The way institutions exchange information and records about survivors is slow and inefficient, and we would not want to see this inefficiency replicated in the way the scheme works. The puretumu torowhānui scheme needs to have simple, direct communication channels with participating institutions to minimise any delays. In Ireland, each institution in which the abuse took place nominated a person to receive notifications and communications from the Residential Institutions Board Redress Board, which simplified the exchange of information between the institution and the scheme. A streamlined approach is particularly vital for institutions with numerous

associated entities because it can otherwise be extremely difficult to identify the correct institution to respond to a claim, and to make contributions to redress. To illustrate the problem, the Catholic Church has 49 entities represented at our inquiry via its co-ordinating body, Te Rōpū Tautoko. If the scheme were required to deal with each of these to, for example, establish which was responsible for financial payments, its work would be greatly slowed. Another difficulty is that information about survivors is often held by numerous institutions. The establishment of Te Rōpū Tautoko was of great assistance to us, and the scheme needs to be similarly assisted.[973]

He tūtohitanga - Recommendations

70. Each faith-based institution should establish or nominate an entity to provide a single point of contact with the puretumu torowhānui scheme and with other institutions in the scheme. The Crown should consider whether State agencies should each establish or nominate an entity for this purpose or whether one such entity should serve all State agencies.

TIROHANGA WHĀNUI - WIDER CONSIDERATIONS

Whakamaharatanga me te whakatairanga aroā
Memorials and awareness-raising

One useful and public way to acknowledge the experiences of survivors – and raise awareness of abuse – is memorials. They are also a tangible way of honouring the memory of survivors who are no longer alive. Survivors have usually suggested placing memorials or plaques at the site of the relevant institution.

Some survivors and iwi have also suggested commemorative events, group reunions, ceremonies to recognise disabled survivors as full "citizens", ceremonies to heal or whakawātea the whenua, and group therapy. Survivors have also asked for archives of their accounts, and of whānau, hapu and iwi, to be established, as part of acknowledging those accounts and preserving them so they are recorded as part of the country's history. We also heard from individuals who had been unable to find where members of their whānau who died in care had been buried. We note that there have been calls for a national project to investigate potential unmarked graves and urupā at psychiatric hospital and psychopaedic sites.

Many survivors have built close connections with fellow survivors based on shared experiences and wanted help to sustain these connections. Survivors also wanted the removal of any honours of, or memorials to, perpetrators.

We consider institutions should work with survivors to identify opportunities to acknowledge abuse and its impact and remember survivors.

Public awareness and discussion of abuse in care have been inadequate, and this includes its intergenerational impact, along with related questions of institutional racism, ableism and colonisation. All New Zealanders have a contribution to make in ensuring the nation's tamariki or children, rangatahi or young people, tāngata whaikaha or disabled people, pakeke or adults and kaumatua or elders are kept safe from harm, including while in care. Society gives little attention to these issues, while social campaigns that seek to eliminate abuse in care are limited, Aotearoa New Zealand research on the subject is scarce, and remembrance events few and far between.

We consider the Crown should fund a programme to increase awareness of abuse in care through research, social campaigns and events to acknowledge abuse.

He tūtohitanga - Recommendations

71. Acknowledgements and apologies should, where appropriate, be accompanied by tangible demonstrations of goodwill and reconciliation. As part of this, the Crown, indirect State care providers and faith-based institutions should consider:

- funding memorials, ceremonies (including "citizenship" ceremonies) and projects that remember survivors
- establishing archives of survivors' accounts of their abuse, and also the accounts of their whānau, hapu and iwi, with the informed consent of these people
- removing any memorials to perpetrators.

72. The Government should consider funding a national project to investigate potential unmarked graves and urupā or graves at psychiatric hospitals and psychopaedic sites, and to connect whānau to those who may be buried there. The Government should support tangata whenua who wish to heal or whakawātea the whenua where this has occurred.

73. The Government should take active steps to raise awareness of abuse in care, what it is, its effects, what has been done in response, and how those abused can seek help. This should include widely disseminating this inquiry's interim report, this report and all subsequent inquiry reports.

74. The Government should fund an ongoing programme focused on supporting the delivery of independent Aotearoa New Zealand-specific research on the effects and causes of abuse in care, and social campaigns that seek to eliminate abuse in care and highlight the need to keep people safe from harm, and events acknowledging what has happened.

Whakaūnga tika, mahi anō hoki - Enforceable rights and duties

All New Zealanders, including those abused in care, have the right to an effective remedy if their rights have been violated. This includes the right to compensation.[974] At present, however, most survivors have no effective remedy for abuse in care as a result of the legal obstacles outlined in Part two of this report. Some survivors would prefer to go to court because they want the institutions or individuals responsible for their abuse to answer for their actions publicly, and because court action has the potential to change the behaviour of institutions and encourage the prevention of abuse. If available, some survivors would also want to seek compensation.

One of the most significant obstacles is what is commonly called the ACC bar. This refers to section 317(1) of the Accident Compensation Act 2001, which prevents individuals from obtaining compensation through the courts if – with some limited exceptions – they are covered by the country's accident compensation scheme.

The basis for section 317(1) is that the no-fault scheme will compensate anyone who suffers harm. But as we have seen, many survivors receive little or no compensation from the scheme for the harm they have suffered. The puretumu torowhānui scheme we recommend will not provide compensation either. Without change in some form, many survivors will not be able to exercise their right to seek an effective remedy.

We consider survivors should be able to go to the courts to assess their claim for compensation, make a public decision and order compensation where appropriate.[975] This is the case in the vast majority of other countries, including Australia.[976] We also consider that allowing survivors to go to court creates an incentive on those designing and running the scheme to make it as attractive as possible compared to taking civil litigation. Also, this option gives institutions an incentive to join the puretumu torowhānui scheme because the costs are likely to be lower than if they remain outside it and deal with claims through the courts. Survivors who do not want to make a claim through the courts will still have access to the puretumu torowhānui scheme. We therefore recommend the Crown enacts:

- a right to be free from abuse in care[977]
- a non-delegable duty on the Crown, faith-based institutions and any other care providers to ensure so far as is reasonably practicable the protection of this right, together with direct liability for any failure to meet this duty
- an exception to the ACC bar for civil claims for abuse in care.

We will explain each of these recommendations in turn, but first the following background: Aside from issues created by the ACC bar, survivors cannot take the Crown to court directly in one of the areas of law most relevant to abuse in care claims – tort.[978] This means they cannot sue the Crown directly in tort for any systemic failure that allowed abuse to occur. Instead, they must try to sue the Crown vicariously by persuading a court the Crown is responsible for the abuse committed by another person, that is, the perpetrator. To do this, the survivor must identify the perpetrator and show a sufficiently close relationship between the perpetrator and the Crown to hold the Crown responsible for the perpetrator's actions. Survivors often cannot do this for a variety of reasons, including their young age at the time of the abuse and the effect of trauma and the passage of time on a survivor's memory. We consider survivors should be able to sue the Crown directly, as they can with faith-based institutions. One more point: survivors can seek exemplary damages

(money to punish a wrongdoer rather than to compensate the victim) even if they are covered by accident compensation legislation, but the scope for damages of this type in vicarious liability claims is at best limited.[979]

Tika ture kia noho tūkino-kore i te wā o te noho taurima
Statutory right to be free from abuse in care

Enacting this right would provide a straightforward legal basis for a case alleging a breach of this right. A survivor would be able to take a case against a perpetrator directly for such a breach. This approach has been taken with other legislation such as the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 relating to sexual and racial harassment (sections 62 and 63). Although this right and the non-delegable duty would be restricted to abuse in care, this is no different to some other rights that apply only in particular settings.[980]

He haepapa ki te tiaki i te tika kia noho tūkino-kore i te wā o te noho taurima
Non-delegable duty to protect the right to be free from abuse in care

In addition to a claim against the abuser, we also consider it necessary to have a separate, non-delegable duty on the Crown and other care providers to protect the right to be free from abuse in care. A survivor should be able to take a case directly against the Crown or other care provider for breach of that duty, either together with a case against an abuser for breach of the right to be free from abuse in care or as a separate case. The effect would be that a care provider would have a primary non-delegable duty to take all reasonably practicable steps to protect the right to be free from abuse in care. The definition of "reasonably practicable" as set out in section 22 of the Health and Safety at Work Act 2015 could be tailored to the abuse in care context. This duty will ensure a survivor can obtain an effective remedy when the care provider has failed to do everything reasonably practicable to prevent abuse in care from occurring – even if the survivor cannot identify the abuser. Neither this duty nor the right to be free from abuse in care would be retrospective, but together they would allow any future victims of abuse to hold the Crown and other care providers to account.

Hāunga te pae ACC - Exception to the ACC bar

An exception to the ACC bar is needed for the right and duty just described to be effective. Otherwise, a survivor could not get compensation from the courts for personal injury resulting from a breach of that right and duty. Similar exceptions already arguably exist, for example, for sexual harassment claims brought under the Human Rights Act 1993[981] and for some compensation available for a victim's actual loss (in the form of reparation orders) under the Sentencing Act 2002.[982]

Kōwhiringa ture ki te whakatutuki i tētahi tika me tētahi mahi
Legislation options to achieve an enforceable right and duty

We consider the Crown has two viable ways to enact this right and duty:

- Amend the Human Rights Act 1993 to include the right and duty, and empower the Human Rights Review Tribunal to hear cases alleging breaches and to award remedies as appropriate.[983]
- Include the right and duty in the same legislation the Crown enacts to establish the puretumu torowhānui scheme.

We note that, in the second option, the Crown could create a path for cases to go to the Human Rights Review Tribunal, an existing court or a new tribunal.[984] Any tribunal or court hearing these cases should have the same or similar powers to grant remedies as the Human Rights Review Tribunal has.[985]

We considered – but discarded – two alternative options. One was to empower the puretumu torowhānui scheme to award remedies available to the Human Rights Review Tribunal (which would include the power to award compensation). But this presented a range of difficulties, including confusion over having two paths to redress, complex and time-consuming compensation assessments in some cases, different standards of proof and the adoption of an adjudication role that was not in keeping with the non-adversarial nature of the scheme.

The other option was to reform accident compensation legislation, so it offered an effective remedy for survivors. The reforms needed would be considerable. It would be necessary to extend cover to all forms of abuse the puretumu torowhānui scheme will cover; new forms of financial compensation would need to be introduced or current forms amended and made more generous; and vocational rehabilitation would need to be extended beyond those entitled to weekly compensation because many survivors may not currently be able to establish an entitlement to weekly compensation. Also, this option would not allow for allegations of abuse to be heard in public, or for public accountability when allegations were upheld.

He tūtohitanga - Recommendations

75. The Crown should create in legislation:

- a right to be free from abuse in care
- a non-delegable duty to ensure all reasonably practicable steps are taken to protect this right, and direct liability for a failure to fulfil the duty

- an exception to the ACC bar for abuse in care cases so survivors can seek compensation through the courts.

76. The Crown should, if it decides not to enact the changes in recommendation 75, consider:

- empowering the puretumu torowhānui scheme to award compensation
- reforming ACC so that it covers the same abuse the new puretumu torowhānui scheme covers and provides fair compensation and other appropriate remedies for that abuse.

Mahi Haumaru Aotearoa - WorkSafe

We consider WorkSafe New Zealand should take a more active role in helping prevent abuse in care by helping ensure care providers meet their health and safety obligations. WorkSafe also has a role in ensuring accountability for abuse in care, including puretumu for survivors, when organisations do not take all reasonably practicable steps to prevent abuse. To our knowledge, however, WorkSafe has never brought a prosecution or other enforcement action against an organisation or individual for abuse in care.

WorkSafe and ACC have a joint action plan that focuses on select industry sectors, including healthcare and social assistance. This plan specifies action areas, outcomes and lead agencies for each sector.[986] WorkSafe has said another focus area is building on its harm prevention approach, including expanding its focus beyond traditional industries to other sectors with higher harm rates.[987]

The harm caused by abuse in care can lead to people taking their own lives. It can also have serious, life-long effects on a survivor's ability to function and participate in and contribute to their family, community, and New Zealand society. It can prevent a survivor from having the lives that others of us take for granted, including the opportunity to fulfil their potential. Abuse can also cause intergenerational harm. There are thousands of abuse in care survivors in Aotearoa New Zealand.

We appreciate that WorkSafe has limited resources. However, we consider there is good justification for WorkSafe including abuse in care within its focus areas. WorkSafe should designate prevention priorities, action areas and outcomes for abuse in care, and monitor and report on its work to achieve these. This should include educating care providers about their health and safety obligations and what they must do to meet them. WorkSafe should also take enforcement action where appropriate for breaches related to abuse in care. Taking a prosecution may mean that a survivor does not have to take a civil case. WorkSafe can also focus on institutional responsibility and systemic issues in a way that other agencies, such as Police, cannot.

He tūtohitanga - Recommendations

77. WorkSafe New Zealand should include abuse in care within its focus areas. This should include investigating and, where appropriate, prosecuting breaches by a care provider and its officers under the Health and Safety at Work Act 2015.

Hātepe whakaea nawe - Civil litigation

Wā tepenga - Limitation periods

We consider the Limitation Act 1950 and Limitation Act 2010 need amending to remove a significant barrier to survivors seeking redress through the courts. We have already discussed in detail the obstacles that arise because of the time limit on bringing a case against the Crown and other care providers, and we consider the Crown should minimise these barriers for survivors seeking redress through the courts.

Limitation periods are primarily intended to encourage cases to be brought as soon as reasonably practicable, avoid difficulties in proving claims because of the passage of time, such as missing documents or poor recollections by witnesses, and minimise any unfairness to those defending a claim about conduct from long ago. As we have also already explained, there are valid reasons why survivors do not bring claims promptly and seldom have documents or witnesses to rely on.

Most of the country's limitation law is set out in the 1950 and 2010 Acts. The 2010 Act introduced a discretion relating to specific claims involving abuse suffered by an individual while under the age of 18.[988] The discretion permits a court to allow a claim to go ahead even though it is outside of the time periods in the 2010 Act. However, this discretion is not retrospective and so does not apply to cases filed before the Act's enactment on 1 January 2011, or abuse that happened before that date. What is essentially the same discretion was also added to the 1950 Act for abuse claims brought by those suffering from a disability because they were deemed to be an "infant", that is, under the age of 20.[989] However, that discretion applies only to a claim filed after 1 January 2011. It does not apply to claims relating to abuse before 1 January 2011 and filed before that date. We are unaware of a single case in which a survivor has managed to persuade a court to use either discretion in the survivor's favour.

Both discretions have limited scope and do not include neglect. Both put the focus on family relationships or settings in defining a perpetrator, further distancing the discretions from possible application in abuse in care cases. In short, both Acts are confusing and their discretions apply haphazardly, do not cover relevant forms of abuse, and have not yet been successfully used in any case. Finally, other countries

have, to varying degrees, removed time limitations for abuse in care.[990]

We consider that both Acts should be amended so:[991]

- survivors abused in care by any perpetrator when they were under the age of 20 are not subject to either Act's limitation periods
- survivors who have previously settled their claim when limitation defences for that claim were available can still take the claim to court if the courts consider it is just and reasonable to do so[992]
- survivors can relitigate their claim despite having had a judgment on it if a limitation defence had been successful against it, and that defence prevented the survivor from getting redress
- the court retains a discretion to decide that a case cannot go ahead if it considers a fair trial is not possible.[993]

To ensure consistency and fairness, we also consider the types of abuse these amendments relate to should be the same as those covered by the redress scheme – which would mean a wider range than the abuse currently referred to in sections 23C(3) and 17(3) of the respective Acts – and that these amendments should apply retrospectively. We are aware retrospective legislation should be used only rarely, but we consider the need for redress by survivors and accountability by society warrant it.[994] We should point out, however, that this limitation reform would not affect the ACC bar. Those unable to make a claim because of the ACC bar can still make a claim to the scheme.

Ētahi atu heipūtanga – Further conditions on civil action

We consider the Crown should also look at whether any further conditions should apply to a survivor's right to litigate or relitigate abuse in care cases that have been settled or on which a judgment has been issued. One question, for example, is whether the "just and reasonable" test should apply only to relitigating cases covered by settlements or also to cases previously decided by the courts.[995] The Crown should also look at whether survivors should have any extra rights in these circumstances.

Ētahi atu ārai – Other barriers

Survivors face other further barriers to bringing a successful claim in court. We have not had sufficient time to consider them fully and consider the Law Commission the right body to undertake this work.

Pakeke paraheahea – Vulnerable adults

Our terms of reference cover children, young people under 18 years and vulnerable adults. The limitation reforms we recommend above apply only to those abused while

under the age of 20, although it seems to us they should also apply to vulnerable adults. If the justification for abolishing limitation periods for people who were abused when they were under 20 applies equally to vulnerable adults, we think the reform should be extended to cover them.[996]

Wā tepenga i raro i te ture oranga hinengaro
Limitation period under mental health legislation

As discussed in part 2.6, the Mental Health Act 1911 and Mental Health Act 1969 both contain immunity provisions that protect staff from civil and criminal liability unless they acted in bad faith or without reasonable care.[997] The Acts, while no longer in force, still apply to some historical abuse cases. The immunity applies if a staff member or other person was acting in pursuance, or intended pursuance, of the legislation. A staff member who, for example, sexually abused a patient would not have been acting in pursuance of this – or any – legislation and would not get the benefit of the immunity.[998] The immunity also does not cover acts done in bad faith or without reasonable care. However, survivors bringing a bad faith or negligence claim must seek the leave of the courts to bring such a case. The courts will grant leave only if satisfied the allegations have substance and the claimant seeks leave within six months of the alleged abuse.[999] This timeframe has prevented many cases reaching the courts. Arguably, the six-month limitation in both Acts should also be retrospectively abolished.

Tohu i te kaikaro tika - Identifying the right defendant

For the reasons stated in part 2.6, identifying the right defendant to sue can be difficult for survivors. Also, some institutions have no assets to meet any potential liability or hold their assets in trusts or other ways inaccessible in any civil claim. One solution could be to require institutions operating through entities to nominate one entity that a) has the necessary assets to meet any liability and b) can be named as the defendant to any abuse in care claim. If an institution does not nominate an entity, a court could nominate as a defendant any trust or other entity established by the institution to hold property for it. Another solution is to require institutions to nominate the correct defendant if they consider they are not that defendant.

Te taunaki i te pānga o ngā tūkinotanga ki te oranga tonutanga
Proving abuse caused problems in later life

Survivors can struggle to prove their later difficulties in life, such as medical or mental health problems, were caused by the abuse they suffered in care. The task is still more difficult if other harmful events happened before or after the abuse. In some circumstances it may be that more flexible causation tests could be applied to abuse

in care cases.[1000] Also, in some cases courts have considered that once a claimant has proven a breach of their rights, the defendant has to show that the harm suffered by the claimant was not due to that breach.[1001] Further consideration is required on the ways in which these issues affect the ability of survivors taking abuse in care cases to succeed in court, and what if any reform should be made.

He tūtohitanga - Recommendations

78. The Crown should amend the Limitation Act 1950 and Limitation Act 2010, with retrospective effect, so:

- any survivor who claims to have been abused or neglected in care while under 20 is not subject to the Acts' limitation provisions
- any survivor who has settled such a claim that was barred under either Act may relitigate if a court considers it just and reasonable to do so
- any survivor who has had a judgment on such a claim can relitigate if they were found to have been barred under either Act's limitation provisions, and the time bar prevented the survivor from getting redress
- the court retains a discretion to decide that a case cannot go ahead if it considers a fair trial is not possible.

79. The Crown should:

- consider whether there should be any other conditions on a survivor's right to litigate or relitigate a case that has been settled or a judgment has been issued on, or whether a survivor should have any extra rights in these circumstances
- direct the Law Commission to review other obstacles to civil litigation by survivors and recommend any corrective steps, a task the Law Commission should complete within 12 months of the Governor-General receiving this report.

Āwhina ā-ture - Legal aid

The complexity of abuse in care claims makes a lawyer essential for survivors, but few can afford them. Most need legal aid, but the number of lawyers willing to work for legal aid rates on abuse in care cases has dwindled over the years to the point where there is more or less just one law firm, Cooper Legal, representing all survivors around the country. The Ministry of Justice told us it attributed the decline to the amount of work entailed in such cases, the difficulty of the work and the low legal aid rates. It is obviously in the interests of survivors, and the proper functioning of a legal aid system, that more lawyers practise in this area of the law. We therefore

recommend that the Crown review and consider raising the rates offered for abuse in care work to attract lawyers into this area of the law.

Many lawyers may not have sufficient knowledge of the relevant law or the skills to work effectively with survivors. We consider the Ministry of Justice and New Zealand Law Society should offer training to lawyers wishing to work on abuse in care cases, including training on how to ensure effective access to justice for disabled people.

Survivors may need assistance to choose a suitably competent lawyer, and they should be able to be confident that the lawyer they have chosen is competent to work on their case. To help with this, we consider the Ministry of Justice should establish, maintain and publicise a list of lawyers who are competent and available to work on abuse in care cases.

He tūtohitanga - Recommendations

80. The Crown should review and consider raising the rates available for abuse in care work.

81. The Ministry of Justice should:

- work with New Zealand Law Society to offer training to lawyers wanting to take on abuse in care cases, including training on how to ensure effective access to justice for disabled people
- establish, maintain and publicise a list of lawyers who are competent and available to work on abuse in care cases.

Tauira kaupapa here kaitāwari - Model litigant policy

The standards the Crown has set for itself in conducting civil litigation and participating in out-of-court schemes are contained in a document called the Attorney-General's Values for Crown Civil Litigation.[1002] This document was drawn up after an independent review in 2012 found the Crown was taking an unnecessarily competitive approach to cases.[1003] The review recommended the Crown adopt a model litigant policy in line with equivalent policies in force in Australia. The Crown's response was to create the values document.[1004] We consider the Crown should follow the original recommendation, replacing the values document with a more exhaustive model litigant policy along the lines of those used in Australia. We consider the Crown should also draw up and follow a list of principles to guide how it responds to abuse in care claims, whether through the courts or through the scheme.

We consider the Attorney-General's civil litigation values to be deficient in important respects. Certainly, it contains various principles with which we agree, such as that the Crown will deal with litigation promptly and efficiently, consider whether a claim

can be settled and initiate negotiations where appropriate, and not contest matters it accepts are correct. However, the document is misplaced in saying the "Crown may take any steps open to a private individual". The Crown, with its vastly greater resources and unique legal position, should abide by values that set it apart from the conduct permitted by private individuals conducting civil litigation. We consider the Crown should expressly say it will behave as a model litigant and explain fully what this means. The Attorney-General's civil litigation values do not anywhere use the words "model litigant".

The Australian Commonwealth[1005] and New South Wales government have model litigant policies that would serve as useful guides in drafting the policy.[1006] They cover a lot of the values in the Attorney-General's civil litigation values, but place a different emphasis on many and also contain many that, in our view, should be made explicit, such as:

- The Crown (including Crown Law, and State agencies) will "behave as model litigants in the conduct of litigation".[1007]
- The Crown will "pay legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid".[1008]
- The Crown will endeavour "to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate".[1009]
- The Crown will, when unable to avoid litigation, "[keep] the costs of litigation to a minimum, including by: (i) not requiring the other party to prove the matter which [the Crown] or the agency knows to be true; (ii) not contesting liability if the [Crown] or the agency knows that the dispute is really about [the size of a payment]; (iii) monitoring the progress of the litigation and using methods that it considers appropriate to resolve litigation, including settlement offers, payments in court or alternative dispute resolution".[1010]
- The Crown will not take "advantage of a claimant who lacks the resources to litigate a legitimate claim".[1011]
- The Crown will not rely "on technical defences unless the [Crown's] or the agency's interests would be prejudiced by the failure to comply with a particular requirement".[1012]
- The Crown will apologise if it "is aware that it or its lawyers have acted wrongfully or improperly".[1013]
- The Crown will, in alternative dispute resolution, ensure their representatives "participate fully and effectively".[1014]

- The Crown will provide "reasonable assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified".[1015]
- The Crown's model litigant obligations do not prevent it from "acting firmly and properly to protect its interests", including by taking "all legitimate steps in pursuing litigation, or from testing or defending claims made".[1016]
- The head of each Crown agency will be, in consultation with the agency's principal legal officer, primarily responsible for compliance with the model litigant policy. In addition, lawyers, whether for the government or private parties, must be made aware of the policy and its obligations.[1017]
- Opposing parties should try to resolve any questions about compliance with the model litigant policy themselves, and if unsuccessful, refer the matter in writing to the head of the agency concerned for a response and resolution.[1018]

In Australia, there are also monitoring bodies to receive annual reports outlining the progress of relevant cases, explaining any significant delays and providing statements of compliance.[1019] This is a commendable step, and one the Crown could consider, along with other accountability measures such as regular, independent reviews of the responses of the Crown or other agencies to claims. Individual staff could also be given greater responsibility for upholding these standards, and Crown lawyers could be required to assess and verify that they are adhering to guidelines at key stages in a claim's development. The Crown could formally review adherence to the model litigant policy as part of performance reviews of lawyers acting on its behalf.

The Crown should also consult faith-based institutions and indirect State care providers when developing the model litigant policy. Once it is in place, those institutions and their lawyers should comply with it when responding to abuse in care claims.

In addition to a model litigant policy, New South Wales has adopted a set of principles guiding how government agencies should respond to civil claims for child abuse.[1020] We consider the Crown should issue a similar document to guide its conduct in responding to abuse in care claims. It should be based on the principles, values and concepts set out in recommendation 4. These principles should include:

- being aware that litigation can be traumatic for survivors
- facilitating free counselling to survivors and information about services and supports available to them, including through the scheme
- making training, including on trauma-informed approaches, available for lawyers who work on abuse in care claims

- providing early acknowledgment of claims and information about steps necessary to resolve the claim
- communicating regularly with survivors or their lawyers about the progress of their claim and likely time to hear a case
- facilitating access to records
- choosing not to rely on an optional statutory limitation period as a defence
- setting target times for resolving claims or setting a hearing date
- resolving claims as quickly as possible.

The Crown should draft these principles so they apply to its involvement in the puretumu torowhānui scheme as well as in litigation. Faith-based institutions and indirect State care providers should also develop their own guiding principles for responding to claims, and these should be consistent with the Crown's but adapted to their own context as appropriate. Faith-based institutions and indirect State care providers should publish these guiding principles and make them available to any survivors who express interest in making a claim.

He tūtohitanga - Recommendations

82. The Crown should draw up a model litigant policy to replace the Attorney-General's civil litigation values, and the policy should be:

- consistent with the contents of this report
- completed within 12 months of the Governor-General receiving this report.

83. State agencies, indirect State care providers and faith-based institutions, along with their lawyers, should act consistently with the model litigant policy in responding to all abuse in care claims, whether lodged through the courts or the scheme.

84. The Crown should draw up a set of principles to guide its conduct in responding to abuse in care claims, and indirect State care providers and faith-based institutions should draw up their own, too.

Tono pārongo me ngā putunga pārongo
Record requests and record-keeping

We have already described the many difficulties survivors or their representatives face in obtaining copies of their records, not to mention understanding them – or rather, understanding what is left of them after extensive redactions. Survivors are entitled to copies of their records, subject to any relevant considerations of the

Privacy Act 2020. Agencies should be helpful when they receive record requests and give survivors their records in as full a form as possible while still respecting the privacy of others. This means favouring disclosure wherever possible and without delay. If they withhold information, they should give the survivor a specific – not vague or generic – explanation. Survivors should also receive help to understand their records.

There is no question redactions are sometimes necessary to protect another person's privacy. However, if protecting a person's privacy means redacting a significant amount of information in a survivor's records, the agency holding the records should seek that person's consent to disclose the information. In determining whether to seek consent, the agency should consider:

- how much the redactions would affect the survivor's ability to understand the records
- how many individuals the agency would have to contact to seek consent
- how readily the agency could contact the individual or individuals concerned
- how much time and effort would be involved in seeking consent, and the impact this could have on responding in a timely way to the survivor
- whether, to the best of its knowledge, seeking consent could cause hurt or distress to the individual or individuals concerned.

The Crown should develop guidelines on when to seek affected individuals' consent to release information in a survivor's records. The guidelines should apply to all State agencies, faith-based institutions and indirect State care providers responding to survivors' record requests, and so they should all be consulted during their development. This work should also be done in partnership with Māori and with survivors' active involvement.

Responding to record requests, especially in a timely way, requires staff and other resources, and agencies need to ensure there are enough of both to perform this task properly. Sound, integrated record-keeping practices are also essential. At the moment, a survivor's records may be scattered among different organisations, creating a variety of difficulties for survivors that we have already discussed. The Crown has told us it has been working on "an integrated and seamless approach" to obtaining survivor records. This work has been going on for a long time and needs to be prioritised. We consider the Crown should complete this work within six months. This policy should also deal with the question of how to preserve records and for how long, as well as the advantages and disadvantages of centralising records.

He tūtohitanga - Recommendations

85. Institutions, when responding to record requests, should:

- help survivors obtain their records in as full a form as possible while still respecting the privacy of others
- help survivors to understand their records
- favour disclosure wherever possible
- be consistent as much as possible in what they disclose, irrespective of whether in response to court discovery rules or survivor requests
- give specific explanations of the privacy reasons they use to justify withholding information
- have the necessary resources to respond in an appropriate and timely way.

86. Institutions should, before making redactions that would withhold a significant amount of information to protect the privacy of one or more individuals, consider seeking the consent of those individuals to release the information.

87. The Crown should develop guidelines, applicable to all institutions, on the matters set out in recommendations 85 and 86, and it should do this in partnership with Māori and with the involvement of survivors and institutions.

88. The Crown should complete its work on a policy to streamline the way agencies handle survivor records within six months, and this policy should also deal with the preservation of records and the advantages and disadvantages of centralising records.

Ngā take me te muku i ngā pārongo
Content and destruction of records

The content of survivors' records varies considerably from organisation to organisation and from one time period to another. This is perhaps not surprising given the lack of any common purpose, definitions or principles to guide those entering information into records. Some survivors pointed out that records concentrated – sometimes exclusively so – on the negative aspects of life in care, leaving no record of, or comment about, happier moments, social events or accomplishments along the way – all of which would create a fuller, more rounded picture for survivors who came to read their files in later years. Training for staff on these elements of record-keeping would be one way, in our view, to help leave a more balanced picture of life in care. Some survivors suggested children and others in care should have regular opportunities to add content to their records – that records be created with

the person in care, rather than just about them – and that records be proactively disclosed to the person they concern. As we have previously noted, some survivors report that institutions firmly regard records as belonging first and foremost to them, and that decisions about who should have access to them and what should happen to them were their exclusive preserve.

There is also the question of when or whether to dispose of records. The Chief Archivist determines how long an organisation must keep certain types of records and when it can dispose of them via what are called disposal authorities. No one disposal authority apparently applies to the records of survivors in care or to the agencies providing care. We were told disposal authorities were supposed to be reviewed every 10 years, but that this did not necessarily happen. Some survivors expressed concern at their lack of involvement, or only limited involvement, in the development or revision of disposal authorities. We received some submissions opposing any destruction of survivors' records or arguing that, at the very least, disposal authorities should take into account that survivors might not divulge abuse for decades and might not therefore seek their records for decades. Some survivors argued for an immediate end to all destruction of survivor records, although other voices argued that survivors might want records of their time in care destroyed. One way through these competing views might be to keep survivor records unless an individual requested otherwise. Given these issues, the Crown should urgently review the disposal authorities relevant to care records and consider whether to prohibit any disposal of care records until at least the completion of its records work.

In Australia, there is an online government service called Find and Connect[1021] that helps individuals find historical information, including images, about institutional care and to connect with local support groups and services. Such a service may be an option here, particularly since the University of Melbourne, which hosts Find and Connect, has offered its help, including by providing relevant software for free. Decisions about whether to develop such an initiative here, and what specific issues would need to be taken into account in its design, would need to be taken in partnership with Māori and with the active involvement of survivors. Making it accessible to disabled survivors would be another consideration. We suggest the Crown consider this option in its work on records, and that it involves Māori and survivors.

He tūtohitanga - Recommendations

89. The Crown should:

- urgently review disposal authorities relevant to care records and consider whether to prohibit the disposal of care records until at least the completion of its work on records
- review care providers' record-keeping practices, consider whether to set a standard governing what records providers should create and keep, and consider whether those keeping records for care providers should receive training
- decide whether Aotearoa New Zealand should have a service similar to Find and Connect.

Te aroturuki - Monitoring

Many survivors approached us out of concern to prevent other children and adults at risk from being abused. We consider the puretumu torowhānui system includes monitoring functions to help prevent abuse in State care, indirect State care and faith-based care. The State's system for monitoring the safety and wellbeing of children, young people and adults at risk in its care is spread among several government agencies and across several ministerial portfolios. It has been under continual review and reorganisation, with little time allowed for recommendations to be fully implemented or evaluated. There have also reportedly been problems with resourcing, a lack of well-trained staff and too little co-ordination. The Office of the Children's Commissioner, as principal monitor of Oranga Tamariki, told us it was strongly in favour of an effective and independent monitor and an independent, child-centred complaints mechanism. At the same time, we have heard calls for monitoring to be decentralised, and to be led by iwi and the community.

Based on what we have learned to date and taking into account submissions from the Children's Commissioner and online wānanga on oversight and monitoring, we have developed a preliminary set of principles that apply to monitoring of children and adults at risk in care. In later reports we will, amongst other things, look at whether the principles would need to be adapted for faith-based institutions.

He tūtohitanga - Recommendations

90. The Crown should ensure that any monitoring body or monitoring activities relating to children, young people and adults at risk in care:

- nurtures the trust of children, young people and adults at risk
- is consistent with the Crown's te Tiriti o Waitangi obligations
- is organised to reflect the Māori-Crown relationship
- is independent of other oversight mechanisms and the organisation(s) being monitored
- complies with all relevant human rights obligations
- operates regularly, or is conducted regularly, using staff with appropriate skills and expertise.

TIKANGA MŌ TE WĀ NEI - INTERIM MEASURES

Ngā kawenga kerēme o te wā - Handling of existing claims

Our inquiry has not halted the flow of claims to institutions. Some survivors may not, or cannot, wait until the new puretumu torowhānui scheme is established. We expect institutions to try hard to resolve these claims received in the lead-up to the scheme's establishment. Commendably, some claim settlements include a clause to the effect that the redress survivors have received does not affect any additional rights or puretumu torowhānui options resulting from our recommendations. We consider all institutions should include this "without prejudice" clause in their settlement offers. We also consider, given the limitation reforms we recommend, that institutions should rely on limitation defences only in cases where they reasonably consider a fair trial will not be possible.

He tūtohitanga - Recommendations

91. Institutions should use their best endeavours to resolve claims in the lead-up to the establishment of the puretumu torowhānui scheme and should offer settlements that do not prejudice survivors' rights under the new puretumu torowhānui scheme or under any legislation enacted in response to our recommendations on civil litigation.

92. Institutions should, until our limitation reform recommendations are implemented, rely on limitation defences only in cases where they reasonably consider a fair trial will not be possible.

Utu tōmua - Advance payments

We have already recommended that the puretumu torowhānui scheme should have the power to make interim payments to seriously ill and elderly survivors. We consider such payments should also be available to such survivors in the period leading up to the scheme's establishment. To distinguish between the two, we refer to payments before the scheme's establishment as "advance payments" (see recommendation 18).

The Crown should set up and fund a mechanism so those unlikely to be able to make a claim to the scheme because of age or illness could receive advance payment. This mechanism would cease once the scheme was in operation. Whether faith-based institutions and indirect State care providers would be expected or required to contribute to the funding of the mechanism would be for the Crown to decide, as would the question of whether those receiving the payment could also seek redress from the institution responsible for their abuse.

Those applying for an advance payment would need to show they had been in care, but would not need to supply evidence of having been abused, beyond providing a statutory declaration to that effect. Given such brief requirements for eligibility, we consider the payment should be a fixed sum, but one that nonetheless provides a meaningful monetary payment. Survivors should have a right of review if their application is declined. Survivors who receive the payment should be able to make a claim to the scheme once it is established. The scheme would deduct this sum from any financial payment they received.

This mechanism should stop when the puretumu torowhānui scheme starts. However, as already recommended, the scheme should continue this priority on claims of elderly and seriously ill survivors and be able to make urgent interim payments to them.

He tūtohitanga - Recommendations

93. The Crown should immediately set up and fund a mechanism to make advance payments to survivors who, because of serious ill health or age, are at significant risk of not being able to make a claim to the puretumu torowhānui scheme. The mechanism should stop when the scheme starts.

Ratonga whakarongo - Listening service

We have already said the puretumu torowhānui scheme should offer a listening service to survivors, and we also consider such a service should be available in the period between the end of this inquiry and the start of the scheme. This interim

listening service should be similar in form to the one-on-one sessions currently held by commissioners. These sessions have proved invaluable to many survivors, allowing them to discuss their abuse in a safe and supportive environment. A referral and assistance service should be part of this listening service, given some survivors will have urgent needs that need attention.

He tūtohitanga - Recommendations

94. The Crown should fund a listening service for survivors in the period between the end of this inquiry and the establishment of the scheme. For those with particularly urgent needs, this should include referral and assistance to access existing services.

TE URUPARE I ĒNEI TŪTOHITANGA
RESPONDING TO THESE RECOMMENDATIONS

We consider that, in light of the length of time so many survivors have had to wait for puretumu torowhānui, the Crown should move promptly to act on our recommendations by making public its initial response, its likely timetable and its plans for consulting about the design of the puretumu torowhānui system and scheme.

He tūtohitanga - Recommendations

95. The Minister for the Public Service should, within four months of the tabling of this report in the House of Representatives, make public the Crown's initial response to the report's recommendations, and this response should include:

- its plan and timetable for giving priority and urgency to claims from elderly or seriously ill survivors, including making interim payments to these survivors where appropriate
- its timetable and resourcing for the Māori Collective and Purapura Ora Collective
- its plan for consulting survivors and their communities about the design of the new puretumu torowhānui system and scheme
- dates by which the puretumu torowhānui scheme will be established and ready to receive claims, and civil litigation reforms enacted.

E PAO, TŌREA - URGENT NEED FOR ACTION

Our work continues as we look more closely at the specific experiences of Māori, Pacific, Deaf and disabled people, and how some survivors overlap into each of these groups. What we uncover will help us determine what more is required to provide effective puretumu torowhānui for the tūkino or abuse, harm and trauma caused by institutions and organisations providing in care. This information is likely to lead to further recommendations. However, work must begin now on winding down the current ineffective State and faith-based redress processes and setting up a new puretumu torowhānui system and scheme that enables survivors to access effective measures to restore their mana and oranga. Survivors and their whānau, support networks, hapū and iwi have been waiting far too long for adequate responses to the abuse, harm and trauma caused to them, resulting in still further anguish. Many survivors have died waiting. The work of establishing a new and more effective puretumu torowhānui system and scheme cannot begin a moment too soon.

NGĀ ĀPITIHANGA
APPENDICES

Āpitihanga 1 - Appendix 1:

Kuputaka o ngā kupu Māori, Moana-nui-a-Kiwa anō hoki e rite tonu nei te whakamahia
Glossary of commonly used Māori and Pacific terms

Atawhai	Kindness, caring
He mana tō tēnā, tō tēnā, ahakoa ko wai	That each and every person has their own mana and associated rights, no matter who they are
Kāinga	Home
Kanohi ki te kanohi	Face to face
Kāwanatanga	Governance
Mahia kia tika	To ensure fairness, equality, honesty, impartiality and transparency
Manaakitanga	Hospitality, kindness, caring for others
Manaakitia kia tipu	To nurture the oranga of survivors and their whānau so that they can prosper and grow
Mātauranga Māori	The body of knowledge originating from Māori ancestors
Mauri	Life force
Oranga	Wellbeing
Purapura ora	Refers to survivors and their potential to heal and regenerate
Puretumu	To seek redress, obtain satisfaction
Puretumu torowhānui	Holistic redress

Rāhui	Temporary restriction or prohibition
Rongoā Māori	Māori healing systems
Te mana tāngata	Refers to the restoration and respect for the inherent mana of people affected by tūkino
Teu le vā and tauhi vā	To tend to and nurture the vā between people and places
Tino rangatiratanga	Self-determination
Tūkino	Abuse, harm and trauma
Utua kia ea	A process to achieve a state of restoration and balance
Vā	The sacred space and interconnectedness between people and places
Whakaahuru	Refers to processes to protect and safeguard people
Whanaungatanga	The kinship connections that exist between people

Āpitihanga 2 - Appendix 2

Kupu ā-kaupapa - Terms of reference

Reprint
as at 5 August 2021

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018

(LI 2018/223)

Elizabeth the Second, by the Grace of God Queen of New Zealand and her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To—

Ali'imuamua Sandra Alofivae, MNZM, of South Auckland, lawyer, former Families Commissioner, and Pacific community leader,

Dr Andrew Erueti, of Auckland, Associate Professor at the University of Auckland Law School,

Paul Gibson, of Wellington, disability adviser, advocate, and community leader, and former Human Rights (Disability Rights) Commissioner,

Her Honour Judge Coral Shaw, of Te Awamutu, former lawyer, District Court Judge, Employment Court Judge, and Judge of the United Nations Dispute Tribunal, and

Julia Anne Steenson, of Auckland, director and elected leader of Ngāti Whātua Ōrākei:

Greeting!

Recitals

Whereas for a number of years, many individuals, community groups, and international human rights treaty bodies have called for an independent inquiry into historical abuse and neglect in State care and in the care of faith-based institutions in New Zealand:

Whereas historical abuse and neglect of individuals in State care or in the care of faith-based institutions warrants prompt and impartial investigation and examination, both to—

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Department of Internal Affairs.

(a) understand, acknowledge, and respond to the harm caused to individuals, families, whānau, hapū, iwi, and communities; and

(b) ensure lessons are learned for the future:

Whereas the Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018 (the **initial order**), on 1 February 2018,—

(a) established the Royal Commission of Inquiry into Historical Abuse in State Care as a public inquiry; and

(b) appointed the Right Honourable Sir Anand Satyanand, GNZM, QSO, as the member of the inquiry; and

(c) provided for its terms of reference to be notified after consultations on them were completed:

Now therefore We, by this Our Commission, establish the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (which continues and broadens the inquiry of, and replaces, the Royal Commission of Inquiry established by the initial order).

It is declared that this Order in Council constituting Our Commission is made—

(a) under the authority of the Letters Patent of Her Majesty Queen Elizabeth the Second constituting the office of Governor-General of New Zealand, dated 28 October 1983;* and

(b) under the authority of section 6 of the Inquiries Act 2013 and subject to the provisions of that Act; and

(c) on the advice and with the consent of the Executive Council.

*SR 1983/225

Preamble: amended, on 5 August 2021, by clause 4(1) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Preamble: amended, on 5 August 2021, by clause 4(2) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Preamble: amended, on 15 November 2019, by clause 4 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268).

Order

1 Title

This order is the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018.

2 Commencement

This order comes into force on the day after the date of its notification in the *Gazette*.

3 Royal Commission of Inquiry established

(1) The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions is established (the **inquiry**).

(2) The inquiry continues and broadens the inquiry of, and replaces, the Royal Commission of Inquiry established by the Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018.

4 Matter of public importance that is subject of inquiry

The matter of public importance that is the subject of the inquiry is the historical abuse of children, young persons, and vulnerable adults in State care, and in the care of faith-based institutions.

5 Members of inquiry

The following persons are appointed to be the members of the Royal Commission to inquire into that matter of public importance:

(a) *[Revoked]*

(b) Ali'imuamua Sandra Alofivae, MNZM:

(c) Dr Andrew Erueti:

(d) Paul Gibson:

(e) Her Honour Judge Coral Shaw:

(f) Julia Anne Steenson.

Clause 5(a): revoked, on 15 November 2019, by clause 5 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268).

Clause 5(f): inserted, on 18 June 2020, by clause 5 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2020 (LI 2020/118).

6 Chairperson of inquiry

The person who is to be the chairperson of the inquiry is Her Honour Judge Coral Shaw.

Clause 6: amended, on 15 November 2019, by clause 6 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268).

7 Date when inquiry may begin considering evidence

The inquiry may begin considering evidence from 3 January 2019.

8 Terms of reference

The terms of reference for the inquiry are set out in the Schedule.

9 Revocation

The Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018 (LI 2018/3) is revoked.

Schedule
Terms of reference

cl 8

Preamble

The New Zealand Government

Reaffirming its commitment, made in October 2017, to establish an independent inquiry into the abuse of individuals in care;

Reflecting on the period between the 1950s and late 1990s, when many children and young persons from all communities were removed from their families and placed in care;

Reflecting also that a number of children, young persons, and vulnerable adults entered the care of faith-based institutions;

Acknowledging that a significant number of those removed from their families and placed in care were from Māori and Pacific communities;

Confirming that many vulnerable adults also entered care during this time;

Recognising that many of these children, young persons, and vulnerable adults were people affected by disabilities, mental illness, or both;

Observing that the placement in care is likely to have involved the State and its officials, whether directly or indirectly;

Appreciating that whilst a number of people in this situation received appropriate treatment, education, and care, many others suffered abuse;

Recognising that those who were abused, as well as their families and whānau, experienced both immediate and long-term impacts;

Emphasising the need to ensure that all people in care are treated with humanity and with respect for the inherent dignity of the person, particularly children, young persons, and vulnerable adults;

Reaffirming applicable domestic and international law, including human rights law, on the proper treatment of people in care, including relevant standards on the prevention of and responses to abuse;

Recognising Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, as well as the status of iwi and Māori under Te Tiriti/the Treaty;

Taking note of the observations made in recent years by United Nations human rights treaty bodies with regard to this issue;

Responding to the calls made for several years, by individuals and groups in New Zealand and abroad, for an independent inquiry into abuse in care;

Considering the establishment of inquiries into similar issues in other countries, including Australia, Canada, England and Wales, Northern Ireland, and Scotland;

Convinced that the matter now requires thorough, effective investigation and review, in order to identify lessons from the past and pathways for the future;

Hereby establishes the following terms of reference for the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institu- tions:

Background

1. Many individuals and community groups have called for an independent inquiry into historical abuse in State care in New Zealand. This included the campaign led by the Human Rights Commission entitled *Never Again / E Kore Anō*. In 2017, the United Nations Committee on the Elimination of Racial Discrimination recommended that New Zealand establish an independent inquiry into this issue. The United Nations Committee on the Rights of the Child also considered the treatment of children in care in 2016. Other countries have established similar inquiries to examine abuse in various settings. During the public consultation on the draft terms of reference, a number of stakeholders called for a broad-based inquiry that could look into abuse both in State care and in the care of faith-based institutions.

2. In recent years, a range of processes has been established to respond to the issue of abuse in State care. The Confidential Forum for Former In-Patients of Psychiatric Hospitals and the Confidential Listening and Assistance Service listened to individual experiences of State care and made recommendations for future work. Their work highlights the significant impact abuse has had on individuals and their families and the co-ordinated efforts that are needed in order to prevent it happening in the future.

3. New Zealand has international legal obligations to take all appropriate legislative, administrative, judicial, and other measures to protect individuals from abuse, including measures to prevent, identify, report, refer, investigate, and follow up incidents of abuse. New Zealand has ratified, or endorsed, a range of international treaties and other instruments which are relevant to the work of this inquiry. These include the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Rights of the Child; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Rights of Persons with Disabilities; and the Declaration on the Rights of Indigenous Peoples. A number of other instruments and guidance materials are also relevant to the proper treatment of people in care.

4. Abuse of individuals in State care is inconsistent with applicable standards and principles of human rights law in New Zealand and internationally. It creates the need for prompt and impartial investigation and examination. When under-

taken effectively, this can provide the basis for understanding, acknowledging, and responding to the harm caused and for ensuring lessons are learned for the future. Abuse of individuals in the care of faith-based institutions is also very serious and calls for a similarly robust and effective response to help prevent future abuse.

5. In light of these matters, a Royal Commission has been established into historical abuse in State care and in the care of faith-based institutions. In accordance with the Inquiries Act 2013 (the **Act**), the inquiry will operate independently, impartially, and fairly. The Department of Internal Affairs is the 'relevant Department' for the purposes of the Act.

6. The inquiry will give appropriate recognition to Māori interests, acknowledging the disproportionate representation of Māori, particularly in care. The inquiry will be underpinned by Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and will partner with Māori throughout the inquiry process.

7. Pacific people have also been disproportionately represented in care. The inquiry will recognise this, together with the status of Pacific people within an increasingly diverse New Zealand.

8. A number of vulnerable adults (for example, those with disabilities, mental illness, or both) also experienced abuse in care. The experiences of these people will also be a key focus of the inquiry.

Purpose and scope

9. The matter of public importance which the inquiry is directed to examine is the historical abuse of children, young persons, and vulnerable adults in State care and in the care of faith-based institutions.

10. The purpose of the inquiry is to identify, examine, and report on the matters in scope. For matters that require consideration of structural, systemic, or prac- tical issues, the inquiry's work will be informed not only by its own analysis and review but also by the feedback of victims/survivors and others who share their experiences. The matters in scope are:

    10.1 The nature and extent of abuse that occurred in State care and in the care of faith-based institutions during the relevant period (as described immediately below):

        (a) the inquiry will consider the experiences of children, young persons, and vulnerable adults who were in care between 1 January 1950 and 31 December 1999 inclusive.

        (b) *[Revoked]*

(c) *[Revoked]*

Schedule clause 10.1(b): revoked, on 5 August 2021, by clause 5(1) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Schedule clause 10.1(c): revoked, on 5 August 2021, by clause 5(1) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

10.2 The factors, including structural, systemic, or practical factors, that caused or contributed to the abuse of individuals in State care and in the care of faith-based institutions during the relevant period. The factors may include, but are not limited to:

(a) the vetting, recruitment, training and development, performance management, and supervision of staff and others involved in the provision of care:

(b) the processes available to raise concerns or make complaints about abuse in care:

(c) the policies, rules, standards, and practices that applied in care settings and that may be relevant to instances of abuse (for example, hygiene and sanitary facilities, food, availability of activities, access to others, disciplinary measures, and the provision of health services):

(d) the process for handling and responding to concerns or complaints and their effectiveness, whether internal investigations or referrals for criminal or disciplinary action.

10.3 The impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities, including immediate, longer-term, and intergenerational impacts.

10.4 The circumstances that led to individuals being taken into, or placed into, care and the appropriateness of such placements. This includes any factors that contributed, or may have contributed, to the decision-making process. Such factors may include, for example, discrimination, arbitrary decisions, or otherwise unreasonable conduct.

(a) With regard to court processes, the inquiry will not review the correctness of individual court decisions. It may, however, consider broader systemic questions, including the availability of information to support judicial decision making, and the relevant policy and legislative settings.

10.5 During the relevant period, what lessons were learned and what changes were made to legislation, policy, rules, standards, and practices to prevent and respond to abuse in care.

Schedule clause 10.5: replaced, on 5 August 2021, by clause 5(2) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

10.6 *[Revoked]*

Schedule clause 10.6: revoked, on 5 August 2021, by clause 5(3) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

10.7 The redress processes for individuals who claim, or have claimed, abuse while in care, including improvements to those processes.

Schedule clause 10.7: amended, on 5 August 2021, by clause 5(4) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

11. As part of its interim or final reports, the inquiry will present comments, findings, and recommendations as described in clauses 31 and 32.

12. In considering the matters in scope, the inquiry shall give particular consideration to any people or groups where differential impact is evident.

13. Available guidance, both in New Zealand and internationally, recognises the general vulnerability of a person who is under the responsibility of another person or entity. Vulnerability may also arise in relation to a person's nationality; race; ethnicity; religious belief; age; gender; gender identity; sexual orienta- tion; or physical, intellectual, disability, or mental health status. The inquirywill give particular consideration to these vulnerabilities in the course of its work.

14. The inquiry may consider other matters that come to its notice in the course of its work, if it considers this would assist the inquiry in carrying out its func- tions and in delivering on its stated purpose.

15. For the avoidance of doubt, existing feedback, complaints, review, claims, settlement, or similar processes will continue to operate during the course of the inquiry's work. As provided in clauses 31 and 32, the inquiry may make interim or final recommendations on improvements to these processes.

Discretion

Schedule heading: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

15A. In addition to the matters that are in scope, the inquiry may also, at its discretion,—

(a) consider issues and experiences prior to 1950:

(b) for the purpose of informing any recommendations made under clause 32A or clause 37A(a), consider issues and experiences after 1999.

Schedule clause 15A: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

15B. To avoid doubt, the discretion in clause 15A means the inquiry may hear from people who—

(a) were in care at any point before 1950:

(b) were in care at any point after 1999:

(c) are currently in care (whether or not they were also in care before 2000).

Schedule clause 15B: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

15C. For the purpose of the inquiry's engagement with people currently in care, further guidance on principles and methods of work is provided in clauses 21 and 22.

Schedule clause 15C: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

15D. Despite the discretion in clause 15A, the inquiry is not permitted to examine or make findings about current care settings and current frameworks to prevent and respond to abuse in care, including current legislation, policy, rules, stand- ards, and practices.

Schedule clause 15D: inserted, on 5 August 2021, by clause 5(5) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Definitions

16. In the course of its work, and when applying the definitions below, the inquiry will consider relevant domestic and international law, including international human rights law.

17. For the purpose of the inquiry, unless the context otherwise requires, the following definitions will apply:

17.1 **Abuse** means physical, sexual, and emotional or psychological abuse, and neglect, and—

(a) the term 'abuse' includes inadequate or improper treatment or care that resulted in serious harm to the individual (whether mental or physical):

(b) the inquiry may consider abuse by a person involved in the provision of State care or care by a faith-based institution. A person may be 'involved in' the provision of care in various ways. They may be, for example, representatives, members, staff, associates, contractors, volunteers, service providers, or others. The inquiry may also consider abuse by another care recipient.

17.2 **Individual** means a child or young person below the age of 18 years, or a vulnerable adult, and—

(a) for the purpose of this inquiry, '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 institution, which may involve deprivation of liberty. 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, intellectual, disability, or mental health status, or due to other factors listed in clauses 8 and 13).

17.3 **State care** means the State assumed responsibility, whether directly or indirectly, for the care of the individual concerned, and—

(a) the State may have 'assumed responsibility' for a person as the result of a decision or action by a State official, a court order, or a voluntary or consent-based process including, for example, the acceptance of self-referrals or the referral of an individual into care by a parent, guardian, or other person:

(b) the State may have assumed responsibility 'indirectly' when it passed on its authority or care functions to another individual, entity, or service provider, whether by delegation, contract, licence, or in any other way. The inquiry can consider abuse by entities and service providers, including private entities and ser- vice providers, whether they are formally incorporated or not and however they are described:

(c) for the purpose of this inquiry, 'State care' (direct or indirect) includes the following settings:

(i) social welfare settings, including, for example:

(A) care and protection residences and youth justice residences:

(B) child welfare and youth justice placements, including foster care and adoptions placements:

(C) children's homes, borstals, or similar facilities:

(ii) health and disability settings, including, for example:

(A) psychiatric hospitals or facilities (including all places within these facilities):

(B) residential or non-residential disability facilities (including all places within these facilities):

(C) non-residential psychiatric or disability care:

(D) health camps:

(iii) educational settings, including, for example:

(A) early childhood educational facilities:

(B) primary, intermediate, and secondary State schools, including boarding schools:

(C) residential special schools and regional health schools:

(D) teen parent units:

(iv) transitional and law enforcement settings, including, for example:

(A) police cells:

(B) police custody:

(C) court cells:

(D) abuse that occurs on the way to, between, or out of State care facilities or settings.

(d) the settings listed above may be residential or non-residential and may provide voluntary or non-voluntary care. The inquiry may consider abuse occurring in any place within these facilities or settings. The inquiry may consider abuse that occurred in the context of care but outside a particular facility. For example, abuse of a person in care, which occurred outside the premises, by a person who was involved in the provision of care, another person (as described in clause 17.1(b)), or another care recipient:

(e) without diminishing the importance of ensuring that people in settings other than those listed in clause 17.3(c) receive good care and treatment, for the purpose of this inquiry, State care does not include the settings listed below. However, the experience of a person in these facilities or settings may be considered if the person was also in State care at the time:

(i) people in prisons, including private prisons:

(ii) general hospital admissions, including private hospitals:

(iii) aged residential and in-home care, including private care:

(iv) immigration detention:

(f) while, for the purpose of this inquiry, the treatment of people in prisons does not fall within the definition of State care, the inquiry may consider the long-term effects of State care on an individual or a group of individuals. The inquiry may, for example, examine whether those who were in State care went on to experience the criminal justice or correctional systems and what conclusions or lessons, if any, might be drawn from the inquiry's analysis:

(g) for the avoidance of doubt, 'abuse in State care' does not include abuse in fully-private settings, such as the family home, except where an individual was also in State care:

(h) for the avoidance of doubt, 'abuse in State care' means abuse that occurred in New Zealand.

17.4 **In the care of faith-based institutions** means where a faith-based institution assumed responsibility for the care of an individual, including faith-based schools, and—

(a) for the avoidance of doubt, care provided by faith-based institutions excludes fully private settings, except where the person was also in the care of a faith-based institution:

(b) for the avoidance of doubt, if faith-based institutions provided care on behalf of the State (as described in clause 17.3(b) above), this may be dealt with by the inquiry as part of its work on indi- rect State care:

(c) as provided in clause 17.3(d) above, care settings may be residential or non-residential and may provide voluntary or non-voluntary care. The inquiry may consider abuse that occurred in the context of care but outside a particular institution's premises:

(d) for the avoidance of doubt, the term 'faith-based institutions' is not limited to one particular faith, religion, or denomination. An institution or group may qualify as 'faith-based' if its purpose or activity is connected to a religious or spiritual belief system. The inquiry can consider abuse in faith-based institutions, whetherthey are formally incorporated or not and however they are described:

(e) for the avoidance of doubt, 'abuse in faith-based care' meansabuse that occurred in New Zealand.

17.5 **Relevant period** means the period described in clause 10.1(a) above.

17.6 **Redress processes** includes monetary processes (for example, historic claims and compensation or settlement processes), as well as non-monetary processes (for example, rehabilitation and counselling).

17.7 **Relevant department** means the Department of Internal Affairs, in accordance with section 4 of the Act.

17.8 **Appropriate Minister** means the Minister of Internal Affairs, in accordance with section 4 of the Act.

17.9 **Care settings** means settings in which an individual is in—

(a) State care (including the settings listed in clause 17.3(c)); or

(b) the care of faith-based institutions.

Schedule clause 17.9: inserted, on 5 August 2021, by clause 5(6) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Principles and methods of work

18. The inquiry will discharge its functions in accordance with the provisions and principles of these terms of reference and the Act. Given the seriousness of the issues under consideration, the inquiry will operate with professionalism and integrity and in line with relevant domestic and international good practice guidance. The inquiry will implement policies, methods, processes, and pro-

cedures that enable it to conduct its work in a manner sensitive to the needs of individuals and their families, whānau, hapū, and iwi, or other supporters.

19. The inquiry will operate according to principles that include (but are not limited to)—

(a) do no harm:

(b) focus on victims and survivors:

(c) take a whānau-centred view:

(d) work in partnership with iwi and Māori:

(e) work inclusively with Pacific people:

(f) facilitate the meaningful participation of those with disabilities, mental illness, or both:

(g) respond to differential impacts on any particular individuals or groups:

(h) be sensitive to the different types of vulnerability that arise for people in care:

(i) ensure fair and reasonable processes for individuals and organisations associated with providing care.

(j) *[Revoked]*

Schedule clause 19(j): revoked, on 5 August 2021, by clause 5(7) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

19A. In addition to operating as required by clause 19, the inquiry must operate in a way that, to the extent practicable,—

(a) avoids taking a legalistic approach:

(b) uses less formal procedures in addition to, or as an alternative to, public hearings.

Schedule clause 19A: inserted, on 5 August 2021, by clause 5(8) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

20. To ensure a sound foundation for its work, the inquiry will implement clear policies and methods of work. These include, but are not limited to, policies or methods of work to—

(a) facilitate the timely receipt of information, the production of documents, or other things, in accordance with the inquiry's powers under the Act:

(b) identify and engage specialist investigative, advisory, or research functions to support the inquiry:

(c) ensure information or evidence obtained or received by the inquiry that identifies particular individuals is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries:

(d) receive information and evidence from, or share information and evidence with, current and previous inquiries in New Zealand and elsewhere, where appropriate and with due regard to confidentiality. This is to ensure that the work of those inquiries, including witness statements, can be taken into account by the inquiry in a way that avoids unneces- sary trauma to individuals and improves efficiency:

(e) ensure that personal information is treated appropriately and in accordance with the principles of sensitivity, confidentiality, and informed consent. Individuals who share their experiences with the inquiry should be able to access their information at a later date on request. The inquiry will establish appropriate processes for handling such requests:

(f) inform participants of support, complaints, or other processes which may be available to them and, to the extent appropriate, assist them in accessing these processes. This includes supporting victims/survivors (if they wish) to refer a matter to the Police or to other appropriate complaints or investigative bodies or support services. The inquiry will adopt appropriate policies around safety and consent in these situations:

(g) provide organisations and other parties sufficient opportunity to respond to requests and requirements for information and documents.

21. The Government's expectation is that—

(a) agencies/institutions will co-operate with the inquiry to enable it to hear from people who are currently in care and, where necessary, these agencies/institutions will ensure a safe and secure environment for the inquiry to undertake this work (for example, if the inquiry visits a care facility):

(b) agencies/institutions will also ensure that the inquiry is able to undertake its work independently and with due regard to the importance of confidentiality:

(c) a person in care who shares their experience with the inquiry in good faith will (in relation to the sharing of that information) not be subject to disciplinary action, a change in care conditions, or other disadvantage or prejudice of any kind:

(d) agencies/institutions will ensure that those who are currently in care and who engage with the inquiry have appropriate supports in place, given the sensitivity of the issues being discussed. This does not limit the application of clause 24.

22. Without limiting section 16 of the Act, and for the avoidance of doubt, there is no requirement or expectation that those who share their experience with the inquiry (whether currently in care or not) must first make use of feedback, complaints, review, claims, settlement, or similar processes. There is also no limitation on people engaging with the inquiry if they have already gonethrough these processes, are currently going through them, or may go through

them in the future. This recognises that the inquiry and other processes exist for similar but distinct purposes, and that the inquiry may recommend improvements to these processes as part of its work.

23. The inquiry will establish an advisory group or groups comprising survivors of abuse in State care and in the care of faith-based institutions that, from time to time, will provide assistance to inquiry members. These groups will help the inquiry focus on victims and survivors by ensuring the voices of survivors are heard and recognised by the inquiry. At the inquiry's request, the groups may be asked to provide feedback on matters the inquiry is considering. The advisory groups will not have a decision-making function. The inquiry willalso, as appropriate, engage specialist advisors (for example, cultural advisors) to strengthen the inquiry's work and fulfil the principles listed in clause 19(a)to (j).

24. The inquiry will establish and implement a detailed plan for the provision of counselling or other support to those who are affected by the issue of abuse in State care or abuse in the care of faith-based institutions. To ensure a victim/survivor-centred approach based on good practice and informed consent, the inquiry may make use of in-house counselling services or partnership or similar arrangements with other specialist providers. The inquiry will apply the dedicated funds that have been set aside for this purpose in a sensitive and appropriate manner.

25. In discharging its functions, the inquiry will operate effectively and efficiently and ensure transparency and accountability in its use of public funds.

Schedule clause 25: replaced, on 5 August 2021, by clause 5(9) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

25A. The inquiry must—

(a) support the relevant department to comply with the department's administrative and financial planning (relevant to the inquiry) by providing regular information and reporting on administrative and financial matters; and

(b) for the purpose of assuring the Minister that the inquiry is on track to deliver the reports and recommendations required under these terms of reference, provide a quarterly report to the Minister that—

(i) sets out the critical activities the inquiry needs to complete under these terms of reference; and

(ii) reports on—

(A) the expected cost of completing the activities; and

(B) the expected timing for completing the activities; and

(C) the progress towards completing the activities (including in terms of cost); and

(iii) explains what steps the inquiry is taking, or proposing to take, to mitigate any risk to completing the activities in accordance with these terms of reference.

Schedule clause 25A: inserted, on 5 August 2021, by clause 5(9) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

25B. The inquiry must—

(a) prepare the form of the quarterly report following consultation with the relevant department; and

(b) provide the form to the appropriate Minister for approval by 31 August 2021.

Schedule clause 25B: inserted, on 5 August 2021, by clause 5(9) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

26. The inquiry will map the nature and extent of abuse in State care and faith- based institutions, the impact of that abuse, and the factors that caused or con- tributed to the abuse. The principal question for this work will be to establish what happened during the relevant period and why.

Schedule clause 26: replaced, on 5 August 2021, by clause 5(10) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

27. The inquiry has the power to determine its own procedure, unless otherwise guided by the Act or these terms of reference. The inquiry may advance its work using a range of methods and settings. The inquiry will determine the appropriate way to manage its work. For example, the inquiry may determine whether all inquiry members need to be present in a particular setting, or whether work can proceed with a smaller number of inquiry members present. The inquiry will ensure its procedures are clear, readily available, and can be understood by the public and participants.

28. The inquiry will be based in New Zealand, where almost all of its work will be undertaken. The inquiry will use, wherever possible and appropriate, modern technology to communicate with participants or others who are based overseas (for example, by video link).

28.1 From time to time, and only where the inquiry determines that it is necessary to gather information or evidence from participants or others who are based overseas, the chairperson, members, or nominated Secre- tariat staff may travel outside New Zealand. The inquiry will ensure that it has all relevant legal or other permissions (as the case may be) to undertake investigative work outside New Zealand. It will also ensure that it conducts this work in an appropriate, effective, and efficient man- ner in accordance with the principles and standards contained in clauses 18, 19, 20, and 25.

29. The inquiry's approach to its analysis and reporting will be sensitive to the different contexts in which abuse occurred (for example, State care or faith-based institutions, the different groups of affected individuals, or abuse occurring at different points in time). The inquiry will reflect this in its work and reporting.

Findings and recommendations

30. The inquiry may deliver one or more public statements on any aspect of its work.

31. The inquiry will report and make general comments, findings, or both, on—

(a) the nature and extent of abuse that occurred (as described in clause 10.1 above):

(b) the factors, including systemic factors, which caused or contributed to abuse (as described in clause 10.2 above):

(c) the impact of the abuse on individuals and their families, whānau, hapū, iwi, and communities (as described in clause 10.3 above):

(d) the circumstances that led to individuals being taken into, or placed into care (as described in clause 10.4 above):

(e) the lessons learned and what changes were made to prevent and respond to abuse (as described in clause 10.5 above).

32. The inquiry will report and make recommendations, which may concern legislation, policy, rules, standards, and practices, on—

(a) *[Revoked]*

(b) any appropriate changes to the existing redress processes for individuals who claim, or have claimed, to have suffered abuse while in State care and faith-based institutions (as described in clause 10.7 above):

(c) any other appropriate steps the State or faith-based institutions should take to address the harm caused, taking into account all of the inquiry's analysis, comments, findings and recommendations. This includes whether there should be an apology by the State and faith-based institutions for the abuse of individuals during the relevant period, or any other action that may be needed.

Schedule clause 32(a): revoked, on 5 August 2021, by clause 5(11) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Schedule clause 32(b): amended, on 5 August 2021, by clause 5(12) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

32A. The inquiry may make recommendations for changes to be made in the future to ensure that the factors that allowed abuse to occur during the relevant period in State care and in faith-based institutions do not persist.

Schedule clause 32A: inserted, on 5 August 2021, by clause 5(13) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

33. In accordance with the Act, the inquiry does not have the power to determine the civil, criminal, or disciplinary liability of any person. However, it maymake findings of fault, that relevant standards have been breached, or both, andmay make recommendations that further steps be taken to determine liability.

Commencement, reporting, and conclusion of work

34. The inquiry will commence once this instrument comes into force and it may begin considering evidence from 3 January 2019. In its first phase, prior to its interim report in 2020, the inquiry will give particular (but not exclusive) consideration to abuse in State care.

35. The inquiry is to provide an interim report on its work, in writing, by28 December 2020. The interim report will be presented in two parts:

35.1 a substantive interim report, including,—

(a) a substantive progress report on the inquiry's work to date on direct and indirect State care and care in faith-based institutions. This may include the key themes or common issues arising in the experiences shared by victims/survivors in the first phase:

(b) an analysis of the size of the cohorts for direct and indirect State care and care in faith-based institutions:

(c) any interim findings and recommendations on the matters in clauses 31 and 32 that could or should be made at an early stage, for the Government's consideration; and

35.2 an administrative interim report, including—

(a) an analysis of the likely workload to complete the next phase of the inquiry, taking into account cohort sizes:

(b) a detailed assessment of any additional budget required to complete the next phase of the inquiry.

36. The substantive interim report (*see* clause 35.1) is to be presented by the inquiry in writing to the Governor-General, who will provide the report to the appropriate Minister. As soon as practicable after receiving the report, the Minister will table the report in the House of Representatives. Once tabled, the inquiry may also publish the substantive interim report on its website.

37. The administrative interim report (*see* clause 35.2) is to be presented by the inquiry in writing to the appropriate Minister. As soon as practicable after receiving the report, the Minister will report to Cabinet to consider any revision to the inquiry's budget and any other matters as appropriate. The administrative interim report will not be tabled in Parliament, but may be released by the Minister.

37A. In addition to the two-part interim report referred to in clauses 35 to 37, the inquiry is to provide—

(a) recommendations on redress processes; and

(b) an interim report on redress processes.

Schedule clause 37A: inserted, on 5 August 2021, by clause 5(14) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

37B. The inquiry is to present the recommendations on redress processes (*see* clause 37A(a)) in writing to the appropriate Minister by 1 October 2021.

Schedule clause 37B: inserted, on 5 August 2021, by clause 5(14) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

37C. The inquiry is to present the interim report on redress processes (*see* clause 37A(b)), which will include the recommendations on redress processes (*see* clause 37A(a)), in writing to the Governor-General by 1 December 2021. The Governor-General will provide the report to the appropriate Minister. As soon as practicable after receiving the report, the Minister will table the report in the House of Representatives. Once tabled, the inquiry may also publish the report on its website.

Schedule clause 37C: inserted, on 5 August 2021, by clause 5(14) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

37D. If the recommendations on redress processes included in the interim report on redress processes are not the same as the recommendations presented to the appropriate Minister under clause 37B, the inquiry must ensure that the interim report includes—

(a) an explanation of the changes made to the recommendations; and

(b) the reasons for the changes.

Schedule clause 37D: inserted, on 5 August 2021, by clause 5(14) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

38. In addition to the two-part interim report referred to in clauses 35 to 37 and the recommendations and interim report referred to in clauses 37A to 37D, the inquiry may issue a further interim report, or reports. In these reports, the inquiry may also issue interim findings and recommendations. The process for tabling interim reports, and their later publication, will follow the same process as for the substantive interim report (*see* clause 36). Any further interim reportsissued under this clause will also be issued in writing and to the Governor- General.

Schedule clause 38: amended, on 5 August 2021, by clause 5(15) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

39. The inquiry is to issue its final report, in writing and containing its final findings and recommendations on the matters in clauses 31 and 32, to the

Governor-General by 30 June 2023. The process for tabling the final report will follow the process provided in section 12 of the Act. Once tabled in the House of Representatives, the final report may also be published on the inquiry's website.

Schedule clause 39: amended, on 5 August 2021, by clause 5(16)(a) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

Schedule clause 39: amended, on 5 August 2021, by clause 5(16)(b) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

40. *[Revoked]*

Schedule clause 40: revoked, on 5 August 2021, by clause 5(17) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

41. In addition to issuing its final report, the inquiry will find other ways to ensure that the public understands and has access to its work, whether by public statements, events, videos, research reports, issues papers, or similar documents.

Amendments

42. The appropriate Minister may amend these terms of reference in accordance with the Act.

Schedule clause 42: amended, on 5 August 2021, by clause 5(18) of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179).

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 12th day of November 2018.

Witness Our Trusty and Well-beloved The Right Honourable Dame Patsy Reddy, Chancellor and Principal Dame Grand Companion of Our New Zealand Order of Merit, Principal Companion of Our Service Order, Governor-General and Commander-in-Chief in and over Our Realm of New Zealand.

Patsy Reddy,
Governor-General.

By Her Excellency's Command,

Jacinda Ardern,
Prime Minister.

Approved in Council,

Rachel Hayward,
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 12 November 2018.

Reprints notes

1 General

This is a reprint of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official elec- tronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2021 (LI 2021/179)

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2020 (LI 2020/118)

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Amendment Order 2019 (LI 2019/268)

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2021

Āpitihanga 3 - Appendix 3

Te mārama ki ngā hauātanga - How we understand disability

The inquiry understands the term 'disability' means different things to different people and that the language to describe disability is constantly evolving and contested. We also know that disability communities are highly diverse and include a broad range of people with different experiences and preferences. This includes different understandings of disability in Māori and Pacific communities.

The inquiry's approach to understanding disability has been informed by some key principles:

- We understand that disabled people, communities and organisations, including Māori and Pacific disability communities, are the experts in framing disability and defining their experiences.
- We respect the rights of survivors to decide how they identify themselves.
- We are guided by te Tiriti o Waitangi and the United Nations Convention on the Rights of Persons with Disabilities, as these are foundational documents that guide our work and are named in our terms of reference.
- We recognise complexity and nuance, rather than adopting a one-size fits all approach.

United Nations Convention on the Rights of Persons with Disabilities

The Convention is a key framework for the inquiry's work. It provides the following definition of disability:[1022]

"Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

The language used in this definition differs in some parts from language commonly used in Aotearoa New Zealand about disability. However, the Convention provides the inquiry with a broad view of disability that has informed our understanding. The Convention establishes groups of people who hold rights under the convention and acknowledges disabled people's experiences of social, environmental and systemic barriers. This is sometimes referred to as the human rights or social model of disability. The definition of disability in the Convention reflects the tireless advocacy of disabled people to reject the medical model of disability "whereby disability was considered to be an individual's problem, something wrong or broken that could be cured or contained".[1023]

Te ao Māori and te Tiriti o Waitangi

It is also critical that our understandings of disability reflect the experiences of Māori survivors and are grounded in te Tiriti o Waitangi. We note the ongoing work to describe Māori experiences and understandings of "disability" in ways that reflect Te Ao Māori concepts and beliefs, including whānau and holistic understandings of health and wellbeing.[1024] In line with this, Kaiwai and Allport made the conclusion in their report for the Waitangi Tribunal that: "what is apparent is that the concept of 'disability', as it has been understood in the modern Western medical paradigm, had no equivalent within Te Ao Māori".[1025] This suggests common language about disability may not be relevant for many Māori survivors.

We are also aware of recent work to develop Māori concepts of 'disability', including Whānau Hauā,[1026] Tāngata Whaikaha and Hautupua.[1027] We also recognise that, as with other concepts and understandings of disability, there is a range of views and preferences in Te Ao Māori. Our approach to language in this report notes the statement in the New Zealand Disability Strategy 2016-2026, that: "Most Māori disabled people identify as Māori first".[1028]

Language used in this report

We have sought to be respectful in the language we use in this report, while acknowledging that there is strongly felt diversity of opinion. Where possible, we have used survivors' own words to describe themselves and their experiences. However, when talking about groups with common experiences, we use language that has been promoted by disability communities and organisations.

Some of the language we use in this report includes:

- "Disabled people" and "people with disabilities". There are different terms used when describing groups who experience disability. Some people prefer the term disabled people, meaning a group of people who are disabled by systems and attitudes from experiencing full participation in society. The term disabled people has also been understood as promoting a common identity for people working together to remove barriers and promote social change. Other people prefer the term "people with disabilities", as it emphasises the person first, before their experience of disability.[1029] In this report we have generally used the term "disabled people".
- "Deaf". Most Deaf people do not identify as disabled, but rather as a distinct community with their own language and culture. Where appropriate, we use the term "Deaf and disabled survivors" to acknowledge this distinction.
- "People with learning disability". This is community preferred language in place of terms such as "intellectual disability or impairment".
- "Neurodiversity". This is the preferred contemporary community term to refer to a broad range of neurological conditions (or "differences") including Autism Spectrum Disorders, Foetal Alcohol Spectrum Disorders, Attention Deficit Hyperactivity Disorder, dyslexia, dyscalculia, dyspraxia and dysgraphia. These terms are themselves broad and refer to a range of traits.

The inquiry's terms of reference include the experiences of people with "mental illness" as a key focus for our inquiry. Psychiatric hospitals and other residential facilities, and non-residential psychiatric care are all settings in the scope of our inquiry. Many people with actual or perceived mental illness do not use the term "disability". However, they have rights under the Convention, and our use of the term "disabled survivors" in this report generally includes them.

As an inquiry we will continue to listen to disabled survivors and mental health communities in Aotearoa New Zealand and may adjust our language in future reports to reflect this, as the language of disability has evolved since the 2006 Convention.

Ngā kupu āpiti: Endnotes

1 Our findings in relation to the failings of the Crown in defending claims of abuse in care are detailed in the case studies of Leoni McInroe, Paul and Earl White, and Keith Wiffin in Volume 2.

Notes – Part 1

2 A report we commissioned estimates about 655,000 people have been in certain types of care settings in NZ since 1950, and that up to 256,000 may have been abused. However, the true situation is likely to be far worse, given the range and breadth of care settings within the scope of our work, and significant gaps in the available data which were provided the basis for these estimates. Nor do these estimates account for effects on the families and whānau of victims, or their communities and later generations. MartinJenkins, *Indicative estimates of the size of cohorts and levels of abuse in state care and faith-based care 1950 to 2019* (Royal Commission of Inquiry into Abuse in Care, 2020), pp. 6-8, 43.

3 Savage, C., Moyle, P., Kus-Harbord, L. et al, *Hāhā-uri, hāhā-tea - Māori Involvement in State Care 1950-1999: Report prepared for the Crown Secretariat* (Ihi Research, 2021), p. 13.

4 Māori Perspective Advisory Committee, *Puao-te-ata-tu (day break): The report of the Ministerial Advisory Committee on a Māori perspective for the Department of Social Welfare* (Department of Social Welfare, 1986), pp. 18, 57.

5 Ibid., p. 18.

6 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, Pre-publication version (Wai 2915, 2021) p. 97.

7 Including: Boshier, P., *He Take Kōhukihuki: A Matter of Urgency* (The Office of the Ombudsman, 2020); Kaiwai, H., Allport, T., Herd, R. et al, *Ko Te Wā Whakawhiti: It's Time for Change - A Māori Inquiry into Oranga Tamariki* (Whānau Ora Commissioning Agency, 2020); Office of the Children's Commissioner, *Te Kuku O Te Manawa: Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi* (2020).

8 *Transcript of evidence of Dr Moana Jackson from the Contextual Hearing* (Royal Commission of Inquiry into Abuse in Care, 29 October 2019), pp. 232, 234.

9 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, Pre-publication version, p. 12.

10 *Transcript of evidence of Dr Moana Jackson from the Contextual Hearing*, p. 236.

11 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, Pre-publication version, p. 12.

12 Ibid.

13 Ibid.

14 *Witness Statement of Dr Rawiri Waretini-Karena* (Royal Commission of Inquiry into Abuse in Care, 2019), p. 13.

15 *Transcript of evidence of Dr Rawiri Waretini-Karena from Contextual Hearing* (Royal Commission of Inquiry into Abuse in Care, 30 October 2019), pp. 149, 160-161.

16 Kaiwai, H., Allport, T., Herd, R. et al, *Ko Te Wā Whakawhiti: It's Time for Change - A Māori Inquiry into Oranga Tamariki*, pp. 25-32. See also: *Witness Statement of Kim Workman* (Royal Commission of Inquiry into Abuse in Care, 5 October 2019); *Witness Statement of Dr Oliver Sutherland* (Royal Commission of Inquiry into Abuse in Care, 4 October 2019).

17 Cook, L., *Second Brief of Evidence of Leonard Warren Cook to the Oranga Tamariki Urgent Inquiry* (Wai 2915, 16 July 2020) p. 4.

18 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, Pre-publication version, p. 29.

19 In 1966, half of the Māori population was aged under 15, and the average number of children born to Māori women was 5.6, compared to 3.5 for Pākehā: Cook, L., *Second Brief of Evidence of Leonard Warren Cook to the Oranga Tamariki Urgent Inquiry*, p. 3.

20 Meredith, P., *Urban Māori – Urbanisation* (Te Ara: The Encyclopaedia of New Zealand, 2015).

21 Dalley, B., "Moving Out of the Realm of Myth: Government Child Welfare Services to Māori, 1925-1972" *New Zealand Journal of History 32*, vol. 2 (1998), p. 195.

22 Ibid., pp. 195-196.

23 Ibid., p. 194; Garlick, T., *Social Developments: An organisational history of the Ministry of Social Development and its predecessors, 1860-2011* (Steele Roberts, 2012), pp. 57, 61.

24 Garlick, T., *Social Developments: An organisational history of the Ministry of Social Development and its predecessors, 1860-2011*, pp. 57-58.

25 Sutherland, O., *Justice and Race: Campaigns against racism and abuse in Aotearoa New Zealand* (Steele Roberts, 2020), p. 193.

26 Sir Kim Workman, quoted in Smale, A., "Smashed by the state: The kids from Kohitere," *Radio New Zealand* (13 February 2017), www.rnz.co.nz/news/national/324425/smashed-by-the-state-the-kids-from-kohitere.

27 *Witness Statement of Sir Kim Workman*, p. 9.

28 Sutherland, O., *Justice and Race: Campaigns against Racism and Abuse in Aotearoa New Zealand*, p. 194.

29 Ibid.

30 Gassin, T., *Māori mental health: A report commissioned by the Waitangi Tribunal for the Wai 2575 Health Services and Outcomes Kaupapa Inquiry* (Waitangi Tribunal, 2019), p. 6.

31 Ibid., p. 4.

32 *Ms BH,* RC-01233-C8R0 (Royal Commission of Inquiry into Abuse in Care, 15 October 2019), p. 26.

33 Ibid., pp. 26-27.

34 *Mr BL,* RC-007740-L6S7 (Royal Commission of Inquiry into Abuse in Care, 2 March 2020), p. 10.

35 Ibid., p. 12.

36 Cook, L., *Second Brief of Evidence of Leonard Warren Cook to the Oranga Tamariki Urgent Inquiry*, pp. 9-12.

37 Nuku, K., *Brief of Evidence of Kerri Nuku to the Oranga Tamariki Urgent Inquiry* (Waitangi Tribunal, Wai 2915, 2 July 2019), p. 4. According to former government statistician Len Cook, growth in the prison population during the 1980s reflected the coming of age of children who had spent time in state care: Cook. L., *Exhibits of Brief of Evidence to the Oranga Tamariki Urgent Inquiry* (Wai 2915, 18 February 2020) pp. 9-10.

38 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, Pre-publication version, p. 185.

39 *Transcript of evidence of Private Session of Wiremu Waikari* (Royal Commission of Inquiry into Abuse in Care, 8 July 2020), pp. 61-62.

40 Kōrero from engagement event with Kiingitanga.

41 *Mr BN,* CRM0006002 (Royal Commission of Inquiry into Abuse in Care 17 April 2019), pp. 5-7.

42 Anae, M., Coxon, E., Mara, D. et al, *Pasifika Education Research Guidelines: Report to the Ministry of Education* (Ministry of Education, 2001), p. 7.

43 Frankael, J., "Pacific Islands and New Zealand" (Te Ara Encyclopedia of New Zealand, 20 June 2012); Larner, W., "Labour migration and female labour: Samoan women in New Zealand," *The Australian and New Zealand Journal of Sociology 27,* vol. 1 (1991), 19-33, p. 31.

44 *Transcript of evidence of Hon Luamanuvao Dame Winnie Laban from Tulou – Our Pacific Voices: Tatala e Pulonga,* TRN0000399 (Royal Commission of Inquiry into Abuse in Care, 19 July 2021), p. 11.

45 *Witness Statement of Dr Sam Manuela,* WITN0560001 (Royal Commission of Inquiry into Abuse in Care, 12 July 2021), p. 8.

46 Ibid.

47 Anae, M., "All power to the people: Overstayers, dawn raids and the Polynesian Panthers", in *Tangata o le Moana: New Zealand and the People of the Pacific*, eds. Mallon, S., Māhina-Tuai, K. and Salesa., D. (Independent Publishing Group, 2012), pp. 221-239.

48 Office of the Prime Minister, *Hansard transcript of the Prime Minister of New Zealand, Rt Hon Jacinda Ardern, speaking at a post-Cabinet press conference* (14 June 2021), p. 1, www.beehive.govt.nz/sites/default/files/2021-06/Press%20Conference%2014%20June%202021%20_0.pdf.

49 *Epuni Boys Home Handbook, 1975,* ORT0000364, p. 75; *Arbor House, Greytown Reception Centre – Annual Report, March 1981 to August 1985,* ORT0003301, p. 36; *Allendale Girls Home, November 1950 to July 1980,* ORT0003455, p. 88.

50 Sometimes, mixed ethnicity was not recorded at all. More recently, the lack of reporting on mixed ethnicity may have been because recording was done using a prioritised ethnicity method, which does not account for mixed ethnicity: Allan, J., *Review of the measurement of ethnicity: Classification and issues* (Statistics New Zealand, 2001), pp. 17-19. This system of ethnicity reporting has been seen in reports as recently as 2017: Ministry of Social Development, *Kids in care – National and local level data* (2017).

51 *Witness Statement of Dr Sam Manuela,* 12 July 2021, p. 13.

52 *Transcript of evidence of Fa'amoana Luafutu from Tulou – Our Pacific Voices: Tatala e Pulonga*, TRN0000399 (Royal Commission of Inquiry into Abuse in Care, 19 July 2021), p. 42.

53 *Witness Statement of Frances Tagaloa,* WITN0020001 (Royal Commission of Inquiry into Abuse in Care, 2 October 2020), p. 11.

54 Ibid.

55 Ibid., p. 12.

56 Ibid.

57 *Witness Statement of Ms CU*, WITN0422001 (Royal Commission of Inquiry into Abuse in Care, 10 June 2021), p. 33.

58 Ibid.

59 Royal Commission of Inquiry into Abuse in Care Research Team, *Research Report: What we know about people in care and the extent of abuse in care* (Royal Commission of Inquiry into Abuse in Care, 2020), pp. 21-23. In 1983, for example, 16 per cent of people in Auckland's Department of Social Welfare institutions were from Pacific communities, which comprised 6 per cent of the general population: Women Against Racism Action Group, *Institutional Racism in the Department of Social Welfare* (Department of Social Welfare, revised edition, 1985), p. 21.

60 *Witness Statement of Mr X*, WITN0157001 (Royal Commission of Inquiry into Abuse in Care, 15 March 2021), p. 8.

61 Sutherland, O., *Justice and Race: Campaigns against Racism and Abuse in Aotearoa New Zealand*, p. 116.

62 *Witness Statement of David Crichton,* WITN0456001 (Royal Commission of Inquiry into Abuse in Care, 9 July 2021), p. 19.

63 *Witness Statement of Mr CE*, WITN0552001 (Royal Commission of Inquiry into Abuse in Care, 8 July 2021), p. 16.

64 Ibid.

65 *Witness Statement of Fa'afete Taito*, (Royal Commission of Inquiry into Abuse in Care, 24 September 2019), p. 7.

66 Ibid., p. 8.

67 United Nations, Convention on the Rights of Persons with Disabilities, (A/Res/61/106, 24 January 2007).

68 The report stated that 22 per cent of adults (people aged 15 years and over) and 11 per cent of children (people aged 0-14) living in households had a disability. See: Ministry of Health, *Living with Disability in New Zealand: A descriptive analysis of results from the 2001 Household Disability Survey and the 2001 Disability Survey of Residential Facilities* (2004), p. 16.

69 Statistics New Zealand, *Disability Survey: 2013* (2014), p. 2.

70 After adjusting for differences in ethnic population age profiles. See: Statistics New Zealand, *Disability Survey: 2013*, p. 3.

71 King, Dr P., *Māori with Lived Experience of Disability - Part I* (Waitangi Tribunal, Wai 2575, 2019), p. 20.

72 Since the 1970s, Māori have had higher rates of admissions to psychiatric institutions than non-Māori: Durie, Sir M.H., Kingi, Te K.R., *A Framework for Measuring Māori Mental Health Outcomes: A Report Prepared for the Ministry of Health* (Massey University, 1997), p. 16; Kingi, T., *Māori mental health: Past trends, current issues and Māori responsiveness* (Massey University, 2005), p. 2. Māori not only more likely to be receiving mental health care, but also more likely to be in secure care and subject to compulsory treatment orders, see: Gassin, T., *Māori mental health: A report commissioned by the Waitangi Tribunal for the Wai 2575 Health Services and Outcomes Kaupapa Inquiry*, pp. 12, 14; *Witness Statement of Mary O'Hagan* (Royal Commission of Inquiry into Abuse in Care, 14 October 2019), pp. 9-10, citing Mental Health Commission.

73 Moore, A. and Tennant, M., *Who is responsible for the provision of support services for people with disabilities?* (National Health Committee, 1997), p. 32.

74 Aitken, R., Caughley, J., Lopdell, F. et al, *Intellectually Handicapped Children: Report of the Consultative Committee set up by the Hon. The Minister of Education in August 1951* (Department of Education, 1953), pp. 24, 38.

75 Special Rapporteur on the rights of persons with disabilities, *Report on the impact of ableism in medical and scientific practice* (A/HRC/43/41, United Nations Human Rights Office of the High Commissioner, 28 February 2020), p. 3.

76 Millen, J., *Breaking Barriers: IHC's First 50 Years* (Bridget Williams Books, 1999), p. 81; Craig, T. and Mills, M., *Care and Control: The role of institutions in New Zealand* (New Zealand Planning Council, 1987), p. 27. Also see: National Advisory Committee on Health and Disability, *To have an 'ordinary' life - Background papers to inform the National Advisory Committee on Health and Disability* (Ministry of Health, 2004), p. 35.

77 Leaman, A., "Dignity restored to Tokanui Hospital's 'lost souls'", *Stuff* (20 February 2016), www.stuff.co.nz/national/77100182/dignity-restored-to-tokanui-hospitals-lost-souls.

78 Tennant, M., "Disability in New Zealand: An Historical Survey," *New Zealand Journal of Disability Studies,* vol. 2 (1996), pp. 12-15.

79 The term 'psychopaedic' is a uniquely New Zealand term, coined in the early 1960s by then Director of Mental Health Dr Geoffrey Blake-Palmer. It stems from the outdated idea that a person with a learning disability has "the mind of a child," see: *Transcript of Evidence of Dr Brigit Mirfin-Veitch* (Royal Commission of Inquiry into Abuse in Care, 1 November 2019) p. 407.

80 Oakley/Carrington, Lake Alice, and Sunnyside were exclusively or mainly focused on psychiatric care, whereas the others provided a mix of care, see: *Te Āiotanga: Report of the Confidential Forum for Former Patients of Psychiatric Hospitals* (2007), pp. 61-62. Total residents were 10,475 as at 31 December 1949; Department of Health, "Annual Report of the Director-General of Health," *AJHR, Session I, H-31,* (1950), p. 27.

81 More than 150 children with learning disabilities attended state special residential schools at Ōtekaieke and Richmond, and residential Deaf schools at Sumner and Titirangi had combined rolls of close to 300 students between them, see: Department of Education, "Education: Child Welfare, State Care of Children, Special Schools, and Infant-Life Protection," *AJHR, Session I, E-04* (1950), pp. 5-6. Figures are for numbers of students enrolled as at 31 March 1946.

82 *Witness Statement of Dr Hilary Stace* (Royal Commission of Inquiry into Abuse in Care, October/November 2019), p. 15.

83 Department of Health, *Review of psychiatric hospitals and hospitals for the intellectually handicapped* (1986), p. 7.

84 Ibid., p. 9.

85 Ibid., p. 15.

86 Ibid., p. 17.

87 National Advisory Committee on Health and Disability, *To have an 'ordinary' life - Background papers to inform the National Advisory Committee on Health and Disability* (Ministry of Health, 2004), p. 35. Mangere was the first psychopaedic institution for people with an intellectual disability to close followed by Templeton Centre in 1999, Braemar in 2004 and the Kimberley Centre in 2006. Psychopaedic wards in psychiatric hospitals also closed, including those at Cherry Farm, Seacliff, Sunnyside, Porirua, Tokanui and Kingseat Hospitals: Milner, P., Gates, S., Mirfin-Veitch, B. et al, *An examination of the outcome of the resettlement of residents from the Kimberley Centre* (Donald Beasley Institute, 2008), p. 3.

88 Henwood, Judge C., *Some memories never fade: Final report of the Confidential Listening and Assistance Service* (Confidential Listening and Assistance Service, 2015), p. 11.

89 *Witness Statement of James Packer*, WITN0081001 (Royal Commission of Inquiry into Abuse in Care, 13 February 2020), p. 4.

90 *Witness Statement of Dr Hilary Stace*, p. 10; *Te Āiotanga: Report of the Confidential Forum for Former Patients of Psychiatric Hospitals*, p. 33; Hamilton, C., "Sterilisation and intellectually disabled people in New Zealand – still on the agenda?", *Kotuitui: New Zealand Journal of Social Sciences Online 7*, vol. 2 (2012), 61-71.

91 *Witness Statement of Enid Wardle,* WITN0401001 (Royal Commission of Inquiry into Abuse in Care, 3 October 2021), p. 5; *Witness Statement of Mr BG,* WITN0520001 (Royal Commission of Inquiry into Abuse in Care, 21 July 2021), p. 7.

92 Milner, P., Gates, S., Mirfin-Veitch, B. et al, *An examination of the outcome of the resettlement of residents from the Kimberley Centre*, p. 58.

93 See: Shalev, S., *Thinking outside the box? A review of seclusion and restraint practices in New Zealand*, (Human Rights Commission, 2017, updated 2020), p. 8. See also: Government Inquiry into Mental Health and Addiction, *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction* (2018) and the reports released in August 2020 by the Chief Ombudsman after the unannounced inspection of five mental health units: Boshier, P., *OPCAT Report: Report of an unannounced inspection of Waiatarau Mental Health Inpatient Unit, Waitakere Hospital, under the Crimes of Torture Act 1989* (Office of the Ombudsman, 2020);Boshier, P., *Report on an unannounced inspection of He Puna Wāiora Mental Health Inpatient Unit, North Shore Hospital, under the Crimes of Torture Act 1989* (Office of the Ombudsman, 2020); Boshier, P., *Report on an unannounced inspection of the Kensington Centre Mental Health Inpatient Unit, Timaru, under the Crimes of Torture Act 1989* (Office of the Ombudsman, 2020); Boshier, P., *Report on an unannounced inspection of Tumanako Mental Health Inpatient Unit, Whangārei Hospital, under the Crimes of Torture Act 1989* (Office of the Ombudsman, 2020); and Boshier, P., *Report on an unannounced inspection of Te Whare o Matairangi Mental Health Inpatient Unit, Wellington Hospital, under the Crimes of Torture Act 1989* (Office of the Ombudsman, 2020).

94 Government Inquiry into Mental Health and Addiction, *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*, see for example: pp. 14, 160.

95 *Witness Statement of Mary O'Hagan*, 14 October 2019, pp. 21-22.

96 Westcott, H. and Jones, D., "The abuse of disabled children," *Journal of Child Psychology and Psychiatry*, vol. 40, no. 4 (1999), 497-506; Ward, M. and Rodger, H., *Child Sexual Abuse in Residential Schools: A literature review* (UK Independent Inquiry into Child Sexual Abuse, 2018), p. 15; Sullivan, P. and Knutson, J., "Maltreatment and disabilities: A population-based epidemiological study," *Child Abuse and Neglect* 24, vol. 10 (2000), 1257-1273.

97 Ward, M. and Rodger, H., *Child Sexual Abuse in Residential Schools: A literature review*, p. 15.

98 Royal Commission of Inquiry into Abuse in Care Research Team, *Research Report: What we know about the numbers of people in care and the extent of abuse in care,* p. 6.

99 *Individual redress submission of Caroline Arrell*, RC-01362-Q4K2 (Royal Commission of Inquiry into Abuse in Care), p. 7.

100 See also: Roguski, Dr M., *The hidden abuse of disabled people residing in the community: An exploratory study* (Tairawhiti Community Voice, 2013), pp. 10-12.

101 *Witness Statement of Walton Ngatai-Mathieson,* WITN0441001 (Royal Commission of Inquiry into Abuse in Care, 11 May 2021), p. 10.

102 Mirfin-Veitch, B. and Conder, J., *"Institutions are places of abuse": The experiences of disabled children and adults in State care between 1950-1992* (Donald Beasley Institute and NZ Human Rights Commission, 2017), pp. 43-44.

103 MartinJenkins, *Indicative estimates of the size of cohorts and levels of abuse in state care and faith-based care 1950 to 2019,* p. 38.

104 Ibid.

105 Tennant, M., *The fabric of welfare: Voluntary organisations, government and welfare in New Zealand, 1840-2005* (Bridget Williams Books, 2007), p. 107.

106 Royal Commission into Institutional Responses to Child Sexual Abuse, *Volume 16: Book 1 – Religious Institutions* (Commonwealth of Australia, 2017), pp. 453-459.

107 Ibid.

108 Ibid., pp. 449-452; Pilgrim. D., "Child Abuse in Irish Catholic Settings: A Non-Reductionist Account", *Child Abuse Review*, *21*, no. 6, 405-413, p. 408.

109 *Witness Statement of Anne Hill,* WITN0013001 (Royal Commission of Inquiry into Abuse in Care, 28 September 2020), p. 2.

110 *Transcript of Evidence of John*, TRN0000332 (Royal Commission of Inquiry into Abuse in Care, 4 December 2020), p. 387.

111 Ibid.

112 *Witness Statement of Ms K,* WITN0045001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), p. 15.

113 Palmer, D., Feldman, V. and McKibbin, G., *Final report - The role of organisational culture in child sexual abuse in institutional contexts* (Royal Commission into Institutional Responses to Child Sexual Abuse, Australia, 2016), pp. 38-39; Beyer, L., Higgins, D. and Bromfield, L., *Understanding organisational risk factors for child maltreatment: A review of literature* (National Child Protection Clearinghouse, Australian Institute of Family Studies, 2005), pp. 44, 59-60.

114 *Witness Statement of Ann-Marie Shelley,* WITN0002001 (Royal Commission of Inquiry into Abuse in Care, 6 August 2020), p. 12.

115 Garlick, T., *Social Developments: An organisational history of the Ministry of Social Development and its predecessors, 1860-2011*, p. 65.

116 Dalley, B., *Family Matters: Child Welfare in Twentieth Century New Zealand* (Auckland University Press, 1998), p. 172.

117 *Witness Statement of Mr X*, p. 7.

118 43 per cent of survivors registered with us are women, see: MartinJenkins, *Indicative estimates of the size of cohorts and levels of abuse in state care and faith-based care 1950 to 2019,* p. 4.

119 *Witness Statement of Mrs D,* WITN0063001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), pp. 3-4. St Mary's Homes Trust Board is affiliated with the Anglican Church.

120 *Transcript of evidence of Mrs D from Faith-based Redress Hearing Phase I*, TRN0000335 (Royal Commission of Inquiry into Abuse in Care, 9 December 2020), pp. 770-771.

121 *Witness Statement of Dr Oliver Sutherland*, p. 9.

122 Stanley, E., *Road to hell: State violence against children in postwar New Zealand* (Auckland University Press, 2016), p. 67.

123 *Witness Statement of Beverly Wardle-Jackson* (Royal Commission of Inquiry into Abuse in Care, 7 November 2019), p. 11.

124 Ibid., p. 8.

125 *Transcript of evidence of Sonja Cooper and Amanda Hill for Cooper Legal from State Redress Hearing Phase I,* TRN0000005 (Royal Commission of Inquiry into Abuse in Care, 29 September 2020), p. 375; *Witness Statement of Professor Elizabeth Stanley* (Royal Commission of Inquiry into Abuse in Care, 11 October 2019), pp. 17-18; *Witness Statement of Dr Oliver Sutherland*, pp. 17-18. See also: Human Rights Commission, *Report of the Human Rights Commission on representations by the Auckland Committee on Racism and Discrimination – Children and Young Persons' Homes, administered by the Department of Social Welfare* (1982), pp. 17-18, 85.

126 *Witness Statement of Gwyneth Beard,* WITN0159001 (Royal Commission of Inquiry into Abuse in Care, 21 March 2021), p. 9. See also: *Witness Statement of Mrs D,* pp. 10-11.

127 *Witness Statement of Dr Hilary Stace*, p. 10; *Te Āiotanga: Report of the Confidential Forum for Former Patients of Psychiatric Hospitals*, p. 33; Hamilton, C., "Sterilisation and intellectually disabled people in New Zealand – still on the agenda?", *Kotuitui: New Zealand Journal of Social Sciences Online 7*, no. 2 (2012), pp. 61-71.

128 *Witness Statement of Enid Wardle,* 3 October 2021, p. 5; *Witness Statement of Mr BG,* 21 July 2021, p. 7.

129 *Witness Statement of Professor Elizabeth Stanley,* p. 16.

130 *Transcript of evidence of Leoni McInroe from State Redress Hearing Phase I*, TRN0000001 (Royal Commission of Inquiry into Abuse in Care, 24 September 2020), p. 156.

131 *Witness Statement of Janet Lowe,* WITN0066001 (Royal Commission of Inquiry into Abuse in Care, 16 September 2020), p. 44.

132 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, Pre-publication version, p. 185.

133 *Witness Statement of Janet Lowe,* p. 44.

134 *Witness Statement of Thomas Doyle,* WITN0360001 (Royal Commission of Inquiry into Abuse in Care, 9 March 2021), p. 116; *Transcript of evidence of Dr Thomas Doyle from Faith-based Redress Hearing Phase II*, TRN0000344 (Royal Commission of Inquiry into Abuse in Care, 23 March 2021), p. 535.

135 *Witness Statement of Mr N,* WITN0070001 (Royal Commission of Inquiry into Abuse in Care, 8 August 2020), p. 11.

136 Ibid.

137 Royal Commission into Institutional Responses to Child Sexual Abuse, *Volume 16: Book 1 – Religious institutions,* pp. 490-492.

138 *Witness Statement of Dr Thomas Doyle*, p. 110.

139 Ibid.

140 Ibid.

141 Ibid., p. 116; Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report - Religious institutions*, pp. 485-490.

142 *Transcript of evidence of Jacinda Thompson from Faith-based Redress Hearing Phase I*, TRN0000333 (Royal Commission of Inquiry into Abuse in Care, 7 December 2020), p. 472.

143 *Witness Statement of Ann-Marie Shelley,* 6 August 2020, p. 9.

144 Royal Commission into Institutional Responses to Child Sexual Abuse, *Volume 16: Book 1 – Religious Institutions*, pp. 485-490.

145 *Witness Statement of Thomas Doyle,* p. 118.

146 Ibid., pp. 118-119.

147 *Transcript of evidence of Frances Tagaloa from Faith Based Redress Hearing Phase I*, TRN0000329 (Royal Commission of Inquiry into Abuse in Care, 30 November 2020), p. 35.

148 *Witness Statement of Fa'afete Taito*, p. 8; *Witness Statement of Ms K*, 21 September 2020, p. 8.

149 Durie, Sir M. H., *Ngā Kāhui Pou: Launching Māori Futures* (Huia Publishers, 2003), p. 36.

150 As developed by Sir Mason Durie in 1982.

151 Durie, Sir M. H., "A Māori Perspective of Health," *Social Science & Medicine 20*, no. 5 (1985), 483-485, p. 483.

152 Health Navigator New Zealand, *Te whare tapa whā and wellbeing* (2021), www.healthnavigator.org.nz/healthy-living/t/te-whare-tapa-wh%C4%81-and-wellbeing/

153 Ibid.

154 Durie, Sir M. H., "A Māori Perspective of Health," p. 484.

155 Ibid., p. 485.

156 Ibid.

157 Ibid.

158 *Witness Statement of Luamanuvao* Dame Winnie Laban, WITN0642001 (Royal Commission of Inquiry into Abuse in Care, 5 July 2021), p. 5.

159 Mo'a, V., "Faasinomaga (identity) and vā (relational space): Samoan ethics" in *Pacific Ethics of Research and Care*, ed. T. Suaalii-Sauni (Huia Publisher, forthcoming, 2023).

160 Wendt, A., "Tatauing the post-colonial body," originally published in *Span* (1996), 15-29, www.nzepc.auckland.ac.nz/authors/wendt/tatauing.asp.

161 Ka'ili, T., "Tauhi vā: Nurturing Tongan sociospatial ties in Maui and beyond," *The Contemporary Pacific,* vol. 17, no. 1 (2005), 89-90, p. 109.

162 Reynolds M., "Relating to Vā: Re-viewing the concept of relationships in Pasifika education in Aotearoa New Zealand," *AlterNative: An International Journal of Indigenous Peoples 12*, vol. 2 (2016), 190-202, p. 194.

163 Ibid., pp. 190-202, 195.

164 *Transcript of evidence of Dr Sam Manuela from Tulou – Our Pacific Voices: Tatala e Pulonga*, TRN0000403 (Royal Commission of Inquiry into Abuse in Care, 23 July 2021), p. 324.

165 *Transcript of evidence of Luamanuvao Dame Winnie Laban from Tulou – Our Pacific Voices: Tatala e Pulonga*, p. 19.

166 *Transcript of evidence of Folasāitu Dr Apaula Julia Ioane from Tulou – Our Pacific Voices: Tatala e Pulonga*, TRN0000408 (Royal Commission of Inquiry into Abuse in Care, 30 July 2021), p. 696.

167 *Transcript of evidence of Luamanuvao Dame Winnie Laban from Tulou – Our Pacific Voices: Tatala e Pulonga,* p. 19.

168 *Transcript of evidence from the Talanoa Panel, Session 2: A Pacific lens on redress from Tulou – Our Pacific Voices: Tatala e Pulonga*, TRN0000407 (Royal Commission of Inquiry into Abuse in Care, 27 July 2020), Dorothy Alofivae at p. 641. The panel members for the session were Dr Michael Fusi Ligaliga, Dorothy Alofivae, Dr Jean Mitaera and Dr Siautu Alefaio-Tugia. Helena Kaho facilitated the panel.

169 *Witness Statement of Luamanuvao Dame Winnie Laban*, p. 7.

170 *Witness Statement of Frances Tagaloa*, WITN00020005 (Royal Commission of Inquiry into Abuse in Care, 23 November 2020), p. 13.

171 *Transcript of evidence from the Talanoa Panel, Session 2: A Pacific lens on redress from Tulou – Our Pacific Voices: Tatala e Pulonga* (Royal Commission of Inquiry into Abuse in Care, 27 July 2020), Dr Michael Ligaliga at p. 628.

172 Ibid., Dorothy Alofivae and Dr Michael Ligaliga at pp. 641-644.

173 Ministry of Health, Strategic directions for the mental health services for Pacific Islands people (1995), p. 11.

174 Ponton, V., "Utilizing Pacific methodologies as inclusive practice," SAGE Open *3*, vol. 8 (2018) citing Suaalii-Sauni, T., Wheeler, A., Saafi, E. et al, "Exploration of Pacific perspectives of Pacific models of mental health service delivery in New Zealand," *Pacific Health Dialogue* 15, vol. 1 (2009), 18-27, pp. 15.

175 Agnew, F., Pulotu-Endemann, K., Robinson, G. et al, Pacific models of mental health service delivery in New Zealand project (Health Research Council of New Zealand, 2004), p. 3.

176 *Transcript of evidence from the Talanoa Panel on a Pacific lens on redress from Tulou – Our Pacific Voices: Tatala e Pulonga*.

177 Pulotu-Endemann, K., *Fonofale model of health* (Health Promotion Forum of New Zealand, 2001), p. 2.

178 Ibid., p. 3.

179 Ibid., p. 5.

180 Ibid, p. 6.

181 *Transcript of evidence from the Talanoa Panel on a Pacific lens on redress from Tulou – Our Pacific Voices: Tatala e Pulonga*, Dr Jean Mitaera at p. 637.

182 Ibid.

183 *Transcript of evidence from Talanoa Panel, Session 1: Pathways into Care from Tulou – Our Pacific Voices: Tatala e Pulonga,* TRN0000407 (Royal Commission of Inquiry into Abuse in Care, 29 July 2021), Dr Tamasailau Suaali'i-Sauni at p. 602. The other panel members for the session were Cabrini 'Ofa Makasiale, Fuimaono Karl Pulotu Endemann, Dr Sailau Sualii-Sauni and Emeline Afeaki-Mafile'o and it was facilitated by Folasaitu Dr Julia Ioane.

184 *Transcript of evidence from the Talanoa Panel on a Pacific lens on redress from Tulou – Our Pacific Voices: Tatala e Pulonga*, Dr Jean Mitaera at pp. 637-638.

185 Ibid., Dr Jean Mitaera at p. 638.

186 Fisher-Borne, M., Cain, J. M. and Martin, S. L., "From mastery to accountability: Cultural humility as an alternative to cultural competence," *Social Work Education 34*, no. 2 (2015), 165-181, p. 177.

187 *Witness Statement of Leota Dr Lisi Kalisi Petaia*, WITN0659001 (Royal Commission of Inquiry into Abuse in Care, 12 July 2021), p. 14.

188 Degener, T., "Disability in a human rights context," *MDPI – Laws 5*, vol. 3 (2016); Quinn, G. and Degener, T., "The current use and future potential of the United Nations human rights instruments in the context of disability," (Office of the United Nations High Commissioner on Human Rights, 2002).

189 McClintock, K., Haereroa, M., Brown, T., and Baker, M., *Kia hora te marino: Trauma informed care for Māori* (Te Rau Mataini, 2018), p. 5.

190 *Witness Statement of Dr Fiona Inkpen for Stand Children's Services Tū Māia Whānau,* WITN0089001 (Royal Commission of Inquiry into Abuse in Care), p. 24.

191 Ibid., pp. 19-23.

192 Ibid., p. 15.

193 Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims (*Wai 898, 2018) Parts 1-2, p. 189.

194 Ibid.

195 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, pp. 12, 107-108; Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, pp. 149, 154; Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims* (Wai 814, 2004), p. 113; Waitangi Tribunal, *Muriwhenua Fishing Report* (Wai *22*, 1988), p. 150; Waitangi Tribunal, *Manukau Report* (Wai 8, 1985) p. 67.

196 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry,* pp. 95-97.

197 Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, pp. 155-156, 189; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity | Te Taumata Tuarua* (Wai 262, 2011), vol 1, pp. 15-17.

198 Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wai 9, 1987), p. 207; Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* (Wai 26; Wai 150, 1990), p. 51; Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, pp. 182-183. See also: *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641.

199 Waitangi Tribunal, *Manukau Report*, p. 70; Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, p. 189.

200 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, Pre-publication version, p. 22.

201 *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641 at [693].

202 As discussed in Waitangi Tribunal, *The Te Arawa Settlement Process Reports* (Wai 1353, 2007), p. 36.

203 Waitangi Tribunal, *Tauranga Moana 1886-2006: Report on the post-Raupatu claims* (Wai 215, 2010), p. 25; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008), vol. 4, p. 1248; Waitangi Tribunal, *Muriwhenua Land Report* (Wai 45, 1997), pp. 405-406; Waitangi Tribunal, *The Ngai Tahu Land Report* (Wai 27, 1991), p. 1052; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Waiheke Island Claim* (Wai 10, 1987), p. 41; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wai 143, 1996), pp. 314-315.

204 Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkīnga Whāruarua: Oranga Tamariki Urgent Inquiry*, Pre-publication version, pp. 22, 93.

205 For more information, see: part 2.2.

206 Human rights standards are contained in range of instruments, including: United Nations, *Universal Declaration of Human Rights* (A/RES/3/217 A, 10 December 1948); United Nations, *International Covenant on Civil and Political Rights* (Treaty Series, vol. 999, 16 December 1966); *International Covenant on Economic, Social and Cultural Rights* (A/RES/2200, 16 December 1966); United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination* (A/Res/2106, 21 December 1965); United Nations, *Convention on the Elimination of All Forms of Discrimination against Women* (A/RES/34/180, 18 December 1979); United Nations, *Convention on the Rights of the Child* (A/Res/44/25, 20 November 1989); United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (A/Res/39/46, 10 December 1984) and its *Optional Protocol* (A/Res/57/199, 22 June 2006); United Nations, *Convention on the Rights of Persons with Disabilities* (A/Res/61/106, 24 January 2007) and *United Nations Declaration on the Rights of Indigenous Peoples* (A/RES/61/295, 2 October 2007).

New Zealand has also enacted the *New Zealand Bill of Rights Act 1990* (No. 109), www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html, to give effect to its obligations under the *International Covenant on Civil and Political Rights,* and recognises human rights in many other enactments, see: *Human Rights Act 1993*, No. 82, www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html; *Crimes Act 1961*, No. 43, www.legislation.govt.nz/act/public/1961/0043/latest/whole.html#DLM327382; *Ombudsmen Act 1975*, No. 9, www.legislation.govt.nz/act/public/1975/0009/latest/whole.html#DLM430984; *Official Information Act 1982*, No. 156, www.legislation.govt.nz/act/public/1982/0156/latest/whole.html#DLM64785; *Crimes of Torture Act 1989*, No. 106, www.legislation.govt.nz/act/public/1989/0106/latest/whole.html#DLM192818; *Privacy Act 1993*, No. 28, www.legislation.govt.nz/act/public/1993/0028/latest/whole.html#DLM296639; *Oranga Tamariki Act 1989*, No. 24, www.legislation.govt.nz/act/public/1989/0024/latest/whole.html#DLM147088; and the *Health and Disability Commissioner Act 1994*, No. 88, www.legislation.govt.nz/act/public/1994/0088/latest/whole.html#DLM333584.

207 Each of the following obligations may apply to some cases of abuse in care: *Universal Declaration of Human Rights,* art 8; *International Covenant on Civil and Political Rights,* art 2(3); *International Convention on the Elimination of All Forms of Racial Discrimination,* art 6; *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* art 14; *Declaration on the Rights of Indigenous Peoples,* art 40.

208 Shelton, D., *Remedies in International Human Rights Law* (Oxford University Press, 3rd ed, 2015), p. 85. This can include a failure to provide effective redress in relation to any event that occurred before the entry into force of any relevant human rights treaty, see: pp. 261-262.

209 United Nations Human Rights Committee, *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant* (CCPR/C/21/Rev.1/Add.13, 26 May 2004), p. 6.

210 United Nations Human Rights Committee, *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant,* p. 6; United Nations Human Rights Committee, *Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights* (CCPR/C/158, 2016), p. 1.

211 Waitangi Tribunal, *Whaia te Mana Motuhake - In Pursuit of Mana, Motuhake: Report on the Māori Community Development Act Claim* (Legislation Direct, Wai 2417, 2015), p. 34.

212 Ibid., p. 38.

213 United Nations, *Convention on the Rights of Persons with Disabilities,* art 16(4). See also, in similar terms: United Nations, *Convention on the Rights of the Child,* art. 39.

214 United Nations, *Convention on the Rights of Persons with Disabilities,* art 16(5).

215 Ibid.

216 Ibid., art 9; Special Rapporteur on the rights of persons with disabilities, *International Principles and Guidelines on Access to Justice for Persons with Disabilities*, see: guideline 8.1, p. 23.

217 Ibid., arts 12-13.

218 Ibid., arts 13(1)-13(2).

219 Ibid., art 4(3).

220 Network of Survivors of Abuse in Faith-based Institutions, "What do victim survivors mean by redress?", included in organisation redress submission (Royal Commission of Inquiry into Abuse in Care, 13 June 2021), p. 1.

221 *Witness Statement of Ms C,* WITN0062001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), p. 22.

222 *Witness Statement of Keith Wiffin,* WITN0080001 (Royal Commission Inquiry into Abuse in Care, 12 February 2020), p. 15.

223 *Witness Statement of Mary Marshall*, WITN0014001 (Royal Commission of Inquiry into Abuse in Care, 21 July 2020), p. 16.

224 *Transcript of evidence of Mr A from Faith-based Redress Hearing Phase I*, TRN0000336 (Royal Commission of Inquiry into Abuse in Care, 10 December 2020), pp. 822-823.

225 *Witness Statement of Anne Hill,* 28 September 2021, p. 15-16.

226 *Witness Statement of Natasha Emery,* WITN0578001 (Royal Commission of Inquiry into Abuse in Care, 08 June 2021), p. 9.

227 *Mr BP,* RC-03229-T3K9 (Royal Commission of Inquiry into Abuse in Care, 21 June 2021), p. 5.

228 *Ms BQ*, RC-01393-S3P4 (Royal Commission of Inquiry into Abuse in Care, 9 October 2019), p. 60.

229 *Mr BR*, RC-00926-Z7B4 (Royal Commission of Inquiry into Abuse in Care, 29 May 2019), p. 17.

230 *Witness Statement of Frances Tagaloa*, 2 October 2020, p. 18.

231 *Transcript of evidence of Mr A from Faith-based Redress Hearing Phase I*, p. 823.

232 Kōrero from engagement event with Kiingatanga.

233 Ibid.

234 Ibid.

235 Ibid.

236 *Transcript of evidence of Redress Roundtable* (Royal Commission of Inquiry into Abuse in Care, 2 July 2021), David Stone at pp. 24-25.

237 Kōrero from engagement event with Kiingitanga.

238 Ibid.

239 *Transcript of evidence of the Talanoa Panel on a Pacific lens on redress from Tulou – Our Pacific Voices: Tatala e Pulonga*.

240 *Transcript of evidence of Dr Sam Manuela from Tulou – Our Pacific Voices: Tatala e Pulonga*, p. 337.

241 Ibid.

242 *Transcript of evidence from the Talanoa Panel on a Pacific lens on redress from Tulou –Our Pacific Voices: Tatala e Pulonga,* Dr Jean Mitaera at pp. 647-648.

243 *Witness Statement of Folasāitu Dr Apaula Julia Ioane,* WITN0685001 (Royal Commission of Inquiry into Abuse in Care, 21 July 2021), p. 13.

244 *Transcript of evidence from the Talanoa Panel on a Pacific lens on redress from Tulou –Our Pacific Voices: Tatala e Pulonga,* Dr Michael Ligaliga at pp. 628-629.

245 Ibid., Dr Michael Ligaliga at p. 643.

246 Throughout Dr Taufa's evidence she discussed how ethnicity recording, and reporting, has impacted on Pacific survivors and Pacific people. See: *Witness Statement of Dr Seini Taufa*, WITN0714001 (Royal Commission of Inquiry into Abuse in Care, 18 July 2021), pp. 17-29.

247 *Transcript of evidence from the Talanoa Panel on pathways into care from Tulou – Our Pacific Voices: Tatala e Pulonga* (Royal Commission of Inquiry into Abuse in Care, 29 July 2021), Emeline Afeaki-Mafile'o at p. 601.

248 Ibid., Emeline Afeaki-Mafile'o at p. 611.

249 *Transcript of evidence from the Talanoa Panel on pathways into care from Tulou – Our Pacific Voices: Tatala e Pulonga,* Sister Cabrini 'Ofa Makasiale at p. 612.

250 *Witness Statement of William Wilson*, WITN0419001 (Royal Commission of Inquiry into Abuse in Care, 6 July 2021), p. 18.

251 *Witness Statement of Ms CU,* p. 32.

252 *Witness Statement of Folasāitu Dr Apaula Julia Ioane,* p. 35.

253 *Transcript of evidence of Folasāitu Dr Apaula Julia Ioane from Tulou – Our Pacific Voices: Tatala e Pulonga*, p. 734.

254 Ibid.

255 *Transcript of evidence of Mr CE from Tulou – Our Pacific Voices: Tatala e Pulonga* (Royal Commission of Inquiry into Abuse in Care, 20 July 2021), p. 110.

256 *Transcript of evidence of the Talanoa Panel on a Pacific lens on redress from Tulou - Our Pacific Voices: Tatala e Pulonga*, Dr Siautu Alefaio-Tugia at p. 644.

257 Ibid., pp. 644-646.

258 *Transcript of evidence of the Talanoa Panel on pathways into care Tulou – Our Pacific Voices: Tatala e Pulonga,* Sister Cabrini Makasiale at p. 619.

259 Kōrero from Deaf and disability stakeholders redress wānanga, 21 October 2021.

260 *Ms BT*, RC-01780-V8T7 (Royal Commission of Inquiry into Abuse in Care, 2 March 2020), pp. 129.

261 *Transcript of evidence of the Redress Roundtable* (Royal Commission of Inquiry into Abuse in Care, 1 July 2021), pp. 14, 32.

262 Kōrero from Deaf and disability stakeholders redress wānanga, 21 October 2021.

263 *Individual redress submission of Matthew Whiting*, RC-01612-C4P2 (Royal Commission of Inquiry into Abuse in Care), p. 1.

264 Kōrero from Deaf and disability stakeholders redress wānanga, 21 October 2021.

265 Ibid., 22 October 2021.

266 Ibid., 21-22 October 2021.

267 Ibid.

268 *Individual redress submission of Matthew Whiting*, pp. 2-3.

Notes – Part 2

269 *Transcript of evidence of Sir Robert Martin from the Contextual Hearing* (Royal Commission of Inquiry into Abuse in Care, 5 November 2019), p. 706.

270 Currently this is Anglican Care (Canterbury / Westland).

271 *Transcript of evidence of Solicitor Una Jagose QC for Crown Law Office from State Redress Hearing Phase II*, TRN0000022 (Royal Commission of Inquiry into Abuse in Care, 2 November 2020), p. 963.

272 Between 1972 and 1977.

273 At the time, the firm was known as Sonja M Cooper Law, but we refer to it as Cooper Legal (as it is now known) throughout.

274 Memorandum from the Office of the Attorney General to Cabinet Policy Committee, *Psychiatric hospitals claims: Proposal for Alternative Dispute Resolution process*, CAB0000005 (18 October 2004), p. 5.

275 Memorandum, *Psychiatric hospitals claims: Proposal for Alternative Dispute Resolution process*, p. 6.

276 Internal Ministry of Social Development memorandum from Garth Young to Historic Claims Steering Group, *Update on investigation*, MSD0002029 (28 August 2006), p. 2.

277 Letter from Solicitor-General Una Jagose QC, Crown Law to Dr Michael Cullen, Attorney General, *Historic child welfare claims*, CAB0000009 (31 January 2007), p. 3.

278 File note from Residual Health Management Unit regarding mental health claims update from Crown Law Office, MOH0000104 (28 September 2004).

279 Internal Ministry of Social Development memorandum from Deputy Chief Executive, Corporate and Governance to the Leadership Team, *Historical claims by former wards of the state,* MSD0002030 (26 February 2007), pp. 2-3.

280 *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II*, 2 November 2020, p. 968.

281 Memorandum, *Psychiatric hospitals claims: Proposal for Alternative Dispute Resolution process*, p. 14.

282 Internal Ministry of Social Development memorandum, *Update on Investigation*, p. 2.

283 Memorandum, *Historical claims by former wards of the state,* p. 2.

284 Report from Crown Law to the Minister of Justice, Minister of Health, Minister of Education, Attorney General and Minister of Social Development, *Historic abuse claims - Update on review*, CAB0000015 (15 December 2019), p. 9.

285 *Transcript of evidence of Solicitor Una Jagose QC from State Redress Hearing Phase II,* 2 November 2020, p. 971.

286 Memorandum, *Historical claims by former wards of the state,* p. 10; Memorandum from Dr Michael Cullen, Attorney-General and Annette King, Minister of Justice to Cabinet Policy Committee, *Review of the litigation strategy for historic claims of abuse*, CAB0000004 (16 May 2008), p. 6.

287 For example, Garth Young told us that the Ministry of Social Development identified from a "reasonably early stage" that Epuni, Hokio and Kohitere Boys' Training Centre stood out in terms of numbers of claims. See: *Transcript of evidence of Garth Young for Ministry of Social Development from State Redress Hearing Phase II*, TRN0000018 (Royal Commission of Inquiry into Abuse in Care, 21 October 2020), p. 314.

288 *Witness Statement of Dr Brigit Mirfin-Veitch* (Royal Commission of Inquiry into Abuse in Care), p. 15.

289 Internal Ministry of Social Development memorandum, *Update on Investigation*, p. 2.

290 File note summary of staff allegations from Garth Young, Ministry of Social Development, in response to a query by Mark Wesley-Smith, the Nation, MSD0002374 (8 September 2017); Internal report from Garth Young to Anne Tolley, Minister of Social Development, *Historic claims update,* MSD0001056 (21 September 2017).

291 Ministry of Health, *Review of psychiatric hospitals and hospitals for the intellectually handicapped: Report to Hon Dr M.E.R. Bassett, Minister of Health* as discussed in Mirfin-Veitch, B. and Conder J., *"Institutions are places of abuse": The experiences of disabled adults in children in State care between 1950- 1992*, pp. 38-39.

292 Report from National Health Advisory Committee on Health and Disability to Minister of Health and Minister of Disability Issues, *To have an 'ordinary' life: Kia whai oranga 'noa'* (2003), pp. 25-26.

293 *Transcript of evidence of Garth Young from State Redress Hearing Phase II,* 21 October 2020, p. 330.

294 Draft letter from Una Jagose, Crown Law, to Jacinda Lean, Ministry of Social Development, regarding advice on child welfare historic claims strategy, CRL0016524 (13 September 2016), p. 6; Draft briefing from Crown Law to Attorney-General regarding limitation defences and claims of abuse in State care, MOE0000221 (November 2018), p. 18.

295 Memorandum from Annette King, Minister of Health, to Cabinet Policy Committee, *Lake Alice Hospital claims: Further settlement,* CAB0000026 (7 December 2001), p. 12.

296 Memorandum, *Review of the litigation strategy for historic claims of abuse*, p. 11.

297 Handwritten note from Private Secretary to a Government Minister regarding Attorney-General's concerns about lawyers' legal aid fees, MOJ0000131 (circa 2009), p. 5. See also: *Transcript of evidence of Solicitor Una Jagose QC from State Redress Hearing Phase II,* 4 November 2020, pp. 1184-1185.

298 Memorandum, *Historical claims by former wards of the state*, pp. 3, 10.

299 *Transcript of evidence of Simon MacPherson for Ministry of Social Development from State Redress Hearing Phase II* (Royal Commission of Inquiry into Abuse in Care, 20 October 2020), p. 119.

300 Memorandum from Dr Michael Cullen, Attorney-General, to Cabinet Policy Committee, *Historic abuse claims against the state,* CAB0000008 (9 May 2005), p. 8.

301 Memorandum, *Review of the litigation strategy for historic claims of abuse*, p. 6.

302 In February 2007, the Ministry of Social Development recorded that Sonja Cooper had estimated that 65 – 75 per cent of her clients were Māori, and the ministry noted that this was consistent with the demographics of the historical residential care population. See: Memorandum, *Historical claims by former wards of the state,* p. 13.

303 In fact, the proposal to Cabinet stated that "the proposals in this paper do not have human rights implications". See: Memorandum, *Review of the litigation strategy for historic claims of abuse*, p. 15.

304 *Te Āiotanga: Report of the Confidential Forum for Former In-Patients of Psychiatric Hospitals*, p. 1.

305 *Witness Statement of Judge Carolyn Henwood* (Royal Commission of Inquiry into Abuse in Care, 28 October 2019), p. 1.

306 Henwood, Judge C., *Some memories never fade: Final report of the Confidential Listening and Assistance Service* (2015), pp. 11, 18.

307 See further discussion on these Mental Health Act immunities in part 2.4.

308 On appeal, the Crown accepted that sexual assaults and gratuitous physical assaults could not be considered to have been acts done in pursuance of the legislation, but all other alleged abuse could be.

309 Including failing to disclose information about the convictions of the alleged abusers to both Keith Wiffin and the White brothers: see case studies of Keith Wiffin and White brothers in Volume 2.

310 Extracts from *White* case transcript, featuring cross examination led by Kristy McDonald QC, WITN0009015 (4 July 2007- 5 July 2007).

311 Memorandum, *Review of the litigation strategy for historic claims of abuse*, pp. 10-11; Memorandum, *Historic abuse claims against the state*, p. 9.

312 *Transcript of evidence of Simon MacPherson from State Redress Hearing Phase II*, pp. 203-204; *Witness Statement of Philip Knipe for Ministry of Health*, WITN0100001 (Royal Commission of Inquiry into Abuse in Care, 27 January 2020), p. 12.

313 *White v Attorney-General* HC Wellington CIV-1999-485-85, 28 November 2007; *K v Crown Health Financing Agency* [2007] NZHC 1267; *J v Crown Health Financing Agency* [2008] NZHC 81.

314 Total of $47.79 million as of November 2020. The payments made from agencies to claimants are as follows: The Ministry of Education spent $0.55m on 2010-2020 direct education claims (*Witness Statement of Helen Hurst for Ministry of Education,* CRN0000066 (Royal Commission of Inquiry into Abuse in Care, 29 January 2021), p. 5). The Ministry of Health spent $16.8m, comprising of $12.6m for Lake Alice since 2000, $2.86m on the CHFA process till 2012 and $1.34m on the HARS process post-2012 (*Crown Closing Submissions – Redress Hearing – Appendix 1 – Breakdown of payments in settlement and legal costs for historic abuse claims (GST exclusive)*, CRN0000049 (Royal Commission of Inquiry into Abuse in Care, 5 November 2020), p. 1). The Ministry of Social Development spent by $30.22 million between 2006 and June 2019 (*Witness Statement of Linda Hrstich-Meyer for Ministry of Social Development*, WITN0102004 (Royal Commission of Inquiry into Abuse in Care, 29 January 2021), p. 10). Oranga Tamariki spent $0.22m on claims 'inherited' by the agency (*Witness Statement of Steven Groom* for Oranga Tamariki, WITN103003 (Royal Commission of Inquiry into Abuse in Care, 18 December 2020), p. 8).

An approximate total of claims that have been resolved through redress processes are as follows. Total of claimants whose settlement resulted in payment have been used wherever possible: The Ministry of Education has settled 33 claims with payments since the scheme was established in 2010 *(Witness Statement of Helen Hurst for Ministry of Education*, WITN0099001 (Royal Commission of Inquiry into Abuse in Care, 27 January 2020), p. 13.) Up to November 2019, the Ministry of Health had resolved approximately 330 claims through CHFA, 185 Lake Alice claims, and 223 claims through its Historic Abuse Resolution Service (*Witness Statement of Philip Knipe*, 27 January 2020, pp. 8, 16, 23.) The ministry told us that since the inquiry's redress hearing, it estimates it has resolved a further 13 Lake Alice claims, bringing the total to almost 200. The Ministry of Social Development has paid approximately 1,592 claimants between the financial years of 2003/2004 and 2019/2020 (*Witness Statement of Linda Hrstich-Meyer for Ministry of Social Development,* WITN0102003 (Royal Commission of Inquiry into Abuse in Care, 31 July 2020), p. 6). Oranga Tamariki has resolved claims by 11 survivors as of October 2020 (*Transcript of evidence of Steven Groom for Oranga Tamariki from State Redress Hearing Phase II,* TRN0000023 (Royal Commission of Inquiry into Abuse in Care, 27 October 2020), p. 617.)

315 *Witness Statement of Linda Hrstich-Meyer,* 31 July 2020, p. 5; *Witness Statement of Simon MacPherson for Ministry of Social Development*, WITN0100001 (Royal Commission of Inquiry into Abuse in Care, 27 January 2020), p. 21.

316 *Witness Statement of Linda Hrstich-Meyer*, 31 July 2020, p. 6.

317 Ibid.

318 Memorandum from Ministry of Social Development's Deputy Chief Executive of Corporate and Governance to their Leadership Team, *Historical claims by former wards of the state,* MSD0002030 (26 February 2007), pp. 3, 16.

319 *Transcript of evidence of Linda Hrstich-Meyer for Ministry of Social Development from State Redress Hearing Phase II,* TRN0000020 (Royal Commission of Inquiry into Abuse in Care, 23 October 2020), p. 481.

320 *Witness Statement of Linda Hrstich-Meyer*, 29 January 2021, p. 19.

321 For example, survivors BSM and WM were offered (and accepted) fast-track offers of $5,000 after moderation, even though their claims were initially assessed as falling within categories that would provide $12,000 and $20,000 respectively. The $5,000 category was designed for "claims with insufficient particulars". Both of these survivors' claims related to multiple physical assaults, including kicking, punching and being thrown around, long stays in "alcatraz" and various practice failures. See: *Witness Statement of Linda Hrstich-Meyer,* 29 January 2021, pp. 4-5, 18.

322 *Witness Statement of Linda Hrstich-Meyer for Ministry of Social Development,* WITN0102001 (Royal Commission of Inquiry into Abuse in Care, 27 January 2020), p. 23.

323 Waitangi Tribunal, *Decision on applications for an urgent hearing concerning the settlement of grievances of Māori children placed in state care and the contemporary actions of Oranga Tamariki* (Wai 972; Wai 1247; Wai 1670; Wai 1911; Wai 2494; Wai 2615; Wai 2619; Wai 2823; Wai 2891, 2019); *Witness Statement of Linda Hrstich-Meyer*, 27 January 2020, pp. 24-25.

324 Consultation with Māori claimants involved eight workshops, including one with professionals working in the area, where they were asked about changes they thought the claims process needed. Around the same time, the ministry also contracted Allen + Clarke to carry out a wider consultation with claimants about their experiences and feedback on the historic claims process. See *Witness Statement of Linda Hrstich-Meyer*, 27 January 2020, pp. 25-26; Douglas, H. and Matahaere-Atariki, D., *Report on the Consultation Process on the Historic Claims Resolution Process with Māori Claimants*, MSC0000461 (Ministry of Social Development, 20 July 2018), p. 3.

325 *Witness Statement of Linda Hrstich-Meyer,* 27 January 2020, p. 26.

326 Ibid., pp. 30-31.

327 *Witness Statement of Linda Hrstich-Meyer - Appendix,* 31 July 2020, p. 7.

328 *Witness Statement of Steven Groom for Oranga Tamariki*, WITN0103001 (Royal Commission of Inquiry into Abuse in Care, 27 January 2020), p. 3.

329 *Transcript of evidence of Steven Groom from State Redress Hearing Phase II*, pp. 621, 623, 629.

330 *Witness Statement of Steven Groom,* 27 January 2020, p. 4.

331 *Transcript of evidence of Steven Groom from State Redress Hearing Phase II,* pp. 650-652.

332 *Submission of Judge Andrew Becroft for the Office of the Children's Commissioner*, CRM0000744 (6 October 2019), p. 12; *Submission of the Office of the Children's Commissioner - Redress for Abuse in Care* (June 2021), p. 12.

333 *Witness Statement of Philip Knipe,* 27 January 2020, p. 15.

334 *Transcript of evidence of Philip Knipe for Ministry of Health from State Redress Hearing Phase II,* TRN0000016 (Royal Commission of Inquiry into Abuse in Care, 19 October 2020), p. 28.

335 *Witness Statement of Philip Knipe,* 27 January 2020, p. 21.

336 *Transcript of evidence of Philip Knipe from State Redress Hearing Phase II,* pp. 65-66.

337 Ibid., pp. 63-64.

338 *Witness Statement of Helen Hurst,* 27 January 2020, p. 9.

339 Ibid., p. 11.

340 *Transcript of evidence of Helen Hurst for Ministry of Education from State Redress Hearing Phase II,* TRN00000024 (Royal Commission of Inquiry into Abuse in Care, 28 October 2020), p. 735.

341 *Witness Statement of Helen Hurst,* 27 January 2020, p. 18. See also *Witness Statement of Helen Hurst,* 29 January 2021, p. 6.

342 Ministry of Education, *Sensitive claims of abuse in state schools* (2021), www.education.govt.nz/our-work/contact-us/historic-claims-for-abuse-or-neglect-at-a-residential-special-school/.

343 *Witness Statement of Wayne Keen*, WITN0387001 (Royal Commission of Inquiry into Abuse in Care, 28 April 2021), p. 20; *Witness Statement of Wiremu Waikari,* WITN0204001 (Royal Commission of Inquiry into Abuse in Care, 27 July 2021), p. 51.

344 *Transcript of evidence of David Crichton from Tulou - Our Pacific Voices: Tatala e Pulonga,* TRN0000406 (Royal Commission of Inquiry into Abuse in Care, 28 July 2021), p. 536.

345 Ibid., p. 534.

346 *Transcript of evidence of Helen Hurst from State Redress Hearing Phase II,* p. 744; *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II*, 4 November 2020, p. 1227; *Transcript of evidence of Garth Young from State Redress Hearing Phase II,* 22 October 2020, p. 452; *Transcript of Linda Hrstich-Meyer from State Redress Hearing Phase II,* 27 October 2020, p. 585.

347 *Transcript of evidence of Steven Groom from State Redress Hearing Phase II*, p. 684.

348 *Witness Statement of Helen Hurst,* 29 January 2021, p. 5.

349 *Transcript of evidence of Linda Hrstich-Meyer from State Redress Hearing Phase II,* 23 October 2020, pp. 460-462.

350 *Witness Statement of Tanya Sammons and Georgina Sammons,* WITN0086001 (Royal Commission of Inquiry into Abuse in Care, 24 February 2020), pp. 19-20.

351 *Transcript of evidence of Linda Hrstich-Meyer from State Redress Hearing Phase II,* 27 October 2020, pp. 575-578.

352 *Transcript of evidence of Linda Hrstich-Meyer from State Redress Hearing Phase II,* 23 October 2020, p. 488.

353 *Transcript of evidence of Philip Knipe from State Redress Hearing Phase II*, pp. 23, 27.

354 *Transcript of evidence of Linda Hrstich-Meyer from State Redress Hearing Phase* II, 23 October 2020, p. 488.

355 *Transcript of evidence of Georgina Sammons, Tanya Sammons and Hope Curtin from State Redress Hearing Phase I,* TRN0000008 (Royal Commission of Inquiry into Abuse in Care, 25 September 2020), Georgina Sammons at pp. 207-210*; Transcript of evidence of David Crichton from Tulou - Our Pacific Voices: Tatala e Pulonga*, pp. 529-531*; Ms BM,* WITN0590001 (Royal Commission of Inquiry into Abuse in Care, 24 November 2020), pp. 22-24.

356 *Transcript of evidence of Sonja Cooper and Amanda Hill for Cooper Legal from State Redress Hearing Phase I,* TRN0000007 (Royal Commission of Inquiry into Abuse in Care, 2 October 2020), pp. 586, 622.

357 Memorandum, *Historical claims by former wards of the state*, pp. 16-17.

358 *Witness Statement of Loretta Ryder,* WITN0267001 (Royal Commission of Inquiry into Abuse in Care, 30 March 2021), p. 26.

359 *Witness Statement of Linda Hrstich-Meyer,* 27 January 2020*,* p. 30.

360 *Witness Statement of Philip Knipe*, 27 January 2020, p. 22*; Witness Statement of Helen Hurst for Ministry of Education*, (Royal Commission of Inquiry into Abuse in Care, 13 March 2020), p. 3.

361 The Ombudsman recommended that Alva Sammons' claim should be treated like any other historic claim. The ministry declined to follow this recommendation. See: *Witness Statement of Tanya Sammons and Georgina Sammons*, 24 February 2020, p. 22; Letter from Prof Ron Paterson, Ombudsman to Amanda Hill, Cooper Legal, regarding the final decision of the Ombudsman Act investigation – Ms Georgina Sammons, REL0000000993 (14 June 2016), p. 5; Email from Office of the Ombudsman to Amanda Hill, Cooper Legal, regarding the Ministry of Social Development's refusal to implement the Ombudsman's recommendation, REL0000001000 (9 March 2018), p. 1.

362 In 2007, Cooper Legal informed Ministry of Social Development that it estimated 65 to 75 per cent of its clients were Māori and the ministry acknowledged that this reflected the historic residential care population. The ministry has also recorded that the majority of its claimants, both direct and unrepresented, are Māori making up around 54 per cent of the ministry's claims from claimants. See: Memorandum, *Historical claims by former wards of the state,* p. 13; *Witness Statement of Simon MacPherson*, 27 January 2020, p. 21.

363 Memorandum, *Historical claims by former wards of the state.*

364 Douglas, H., and Matahaere-Atariki, D., *Report on the Consultation Process on the Historic Claims Resolution Process with Māori Claimants*; *Transcript of evidence of Simon MacPherson from State Redress Hearing Phase II*, pp. 126-127.

365 *Witness Statement of Linda Hrstich-Meyer,* 27 January 2020, p. 30.

366 Ministry of Education, *Ministry of Education Redress Process: Sensitive Claims Lodgement Form,* assets.education.govt.nz/public/Documents/our-work/Claim-Lodgement-Form.pdf.

367 Douglas, H., and Matahaere-Atariki, D., *Report on the Consultation Process on the Historic Claims Resolution Process with Māori Claimants*, p. 18.

368 *Transcript of evidence of Steven Groom from State Redress Hearing Phase II*, p. 664.

369 *Transcript of evidence of Philip Knipe from State Redress Hearing Phase II,* p. 98.

370 The Act does not expressly empower the courts to grant remedies for breaches, but the courts have determined that they have this power. Compensation is available as a remedy, not as a right, and depends on the facts of the case. The courts will not award compensation if they consider that non-financial remedies are enough to show that a defendant's behaviour was wrong. If compensation is awarded, it tends to be moderate. See: *Taunoa v Attorney-General* [2007] NZSC 70, [2008] 1 NZLR 429; Andrew Butler, A., and Butler, P., *The New Zealand Bill of Rights Act: A Commentary,* 2nd ed (LexisNexis, 2015), pp. 1531-1532.

371 The Ministry of Education clarified that the alleged abuse that is the basis of the allegation may be taken into account, but no additional payment is offered for the alleged breach of the New Zealand Bill of Rights Act 1990, because it does not require proof of any claim to a legal standard. In settling any such claim, it includes a statement in a memorandum of settlement "to make it clear that in reaching settlement with the plaintiff the defendant does not in any way accept that the plaintiff's cause of action based on various human rights instruments was properly brought, or that those allegations are made out, or that, that cause of action is the subject of any payment made under the settlement agreement." See: *Witness Statement of Helen Hurst*, 29 January 2021, p. 8.

372 File Note by Ministry of Social Development, *Recognising potential Bill of Rights damages in the Alternative Dispute Resolution process,* MSC0000442 (8 November 2016).

373 Letter from Julia White, Crown Response to the Abuse in Care Inquiry to Joss Opie, Royal Commission of Inquiry into Abuse in Care, regarding how New Zealand Bill of Rights Act breaches are treated in claims for redress by each of the Crown agencies (16 August 2021), p. 2; *Transcript of evidence of Linda Hrstich-Meyer from State Redress Hearing Phase II*, 27 October 2020, pp. 572-573.

374 *Transcript of evidence of Linda Hrstich-Meyer from State Redress Hearing Phase II*, 27 October 2020, p. 581.

375 Ibid., pp. 573-575.

376 *Transcript of evidence of Helen Hurst from State Redress Hearing Phase II*, p. 752.

377 *Ms BM*, p. 32.

378 Weekes, J., "Lawsuit looms after intrusive searches, $375k payout for women prisoners," *Stuff* (26 March 2019), www.stuff.co.nz/national/crime/111554199/women-prisoners-get-apology-and-375k-payout-for-intrusive-searches?rm=m.

379 Ministry of Social Development, *MSD Historic Claims: Business process and guidance,* Version 2.2, CRN0000057 (2020), p. 25.

380 *Transcript of evidence of Solicitor-General Una Jagose QC from State Redress Hearing Phase II,* 2 November 2020, p. 991.

381 Ministry of Education, *Sensitive claims of abuse in state schools*, www.education.govt.nz/our-work/contact-us/historic-claims-for-abuse-or-neglect-at-a-residential-special-school/.

382 *Transcript of evidence of Helen Hurst from State Redress Hearing Phase II,* p. 784.

383 *Transcript of evidence of Philip Knipe from State Redress Hearing Phase II*, p. 54.

384 *Witness Statement of Philip Knipe,* 27 January 2020, p. 22.

385 *Transcript of evidence of Steven Groom from State Redress Hearing Phase II,* pp. 642-643.

386 Oranga Tamariki, *Claims* (2020), www.orangatamariki.govt.nz/about-us/contact-us/feedback/claims/.

387 *Transcript of evidence of Linda Hrstich-Meyer from State Redress Hearing Phase II,* 23 October 2020, p. 542.

388 Ibid.

389 Ibid.

390 *Transcript of evidence of Philip Knipe from State Redress Hearing Phase II,* p. 34.

391 *Witness Statement of Simon MacPherson*, 27 January 2020, p. 19.

392 *Witness Statement of Ms K*, WITN0045001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), pp. 7-8.

393 *Witness Statement of Mr G*, WITN0046001 (Royal Commission of Inquiry into Abuse in Care, 4 November 2020), p. 4.

394 *Witness Statement of Mr AX*, WITN0016001 (Royal Commission of Inquiry into Abuse in Care, 7 August 2020), p. 15.

395 *Witness Statement of Mary Marshall*, WITN0014001 (Royal Commission of Inquiry into Abuse in Care, 21 July 2020), p. 3.

396 *Witness Statement of Ms CU*, WITN0422001 (Royal Commission of Inquiry into Abuse in Care, 10 June 2021), p. 20.

397 *Witness Statement of Gloria Ramsay*, WITN0021001 (Royal Commission of Inquiry into Abuse in Care, 15 September 2020), p. 13.

398 *Witness Statement of Mr A*, WITN0044001 (Royal Commission of Inquiry into Abuse in Care, 19 August 2020), p. 2.

399 *Transcript of evidence of Closing Statement by The Salvation Army from Faith-based Redress Hearing Phase II*, TRN0000348 (Royal Commission of Inquiry into Abuse in Care, 29 March 2021), pp. 882, 887-888; *Transcript of evidence of Closing Statement by the Catholic Church from Faith-based Redress Hearing Phase II*, TRN0000348 (Royal Commission of Inquiry into Abuse in Care, 29 March 2021), pp. 936-937; *Transcript of evidence of Archbishop Donald Tamihere and Archbishop Philip Richardson for the Anglican Church from Faith-based Redress Hearing Phase II*, TRN0000343 (Royal Commission of Inquiry into Abuse in Care, 22 March 2021), pp. 418-419.

400 *Synopsis of Oral Closing Submissions for the Bishops and Congregational Leaders of the Catholic Church in Aotearoa New Zealand* (Royal Commission of Inquiry into Abuse in Care, 29 March 2021), p. 14.

401 *Transcript of evidence of Cardinal John Dew for the Archdiocese of Wellington and the Metropolitan Diocese from Faith-based Redress Hearing Phase II*, TRN0000347 (Royal Commission of Inquiry into Abuse in Care, 26 March 2021), pp. 868-869.

402 *Transcript of evidence of Closing Statement of The Salvation Army from Faith-based Redress Hearing Phase II*, p. 887.

403 *Transcript of evidence of Bishop Ross Bay for the Anglican Church from Faith-based Redress Hearing Phase II*, TRN0000341 (Royal Commission of Inquiry into Abuse in Care, 18 March 2021), p. 284.

404 *Witness Statement of Vincent Reidy,* WITN0027001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), p. 13.

405 The Holy See has ratified a number of international conventions, including the *United Nations Convention on the Rights of the Child* and the *Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.*

406 Code of Canon Law (1983), canon 333 §1.

407 Code of Canon Law (1893), canons 431-436.

408 *Witness Statement of Cardinal John Dew for the Archdiocese of Wellington and the Metropolitan Diocese,* WITN0252001 (Royal Commission of Inquiry into Abuse in Care, 23 September 2020), p. 10.

409 Ibid., p. 11

410 *Transcript of evidence of Cardinal John Dew from Faith-based Redress Hearing Phase II*, p. 803.

411 Ibid.

412 *Witness Statement of Cardinal John Dew*, 23 September 2020, pp. 11-12.

413 These included, for example, the protocol used by the Diocese of Christchurch, which was issued in 1994: Diocese of Christchurch, *Protocol,* CTH0001608 (1994) and the Sexual Misconduct Protocol issued by the Diocese of Hamilton on 1 June 1994: Diocese of Hamilton, *Sexual Misconduct Protocol*, CTH0001515 (June 1994).

414 Congregation Leaders Conference of Aotearoa New Zealand, *Suggested Procedures in Cases of Allegations of Sexual Abuse by a Religious*, MSC0001140 (8 March 1996).

415 Memorandum from Peter Ewart, Society of Mary, to Members of the New Zealand Catholic Bishops Conference regarding replies from conference members concerning ACBC protocol for dealing with allegations of criminal behaviour, CTH0002317 (24 March 1992).

416 New Zealand Catholic Bishops Conference, *Catholic Church Guidelines on Sexual Misconduct by Clerics, Religious, and Church Employees*, CTH0002331 (1993).

417 Ibid., p. 2.

418 New Zealand Catholic Bishops Conference and the Congregational Leaders Conference of Aotearoa New Zealand, *Te Houhanga Rongo – A Path to Healing: Principles and procedure in responding to complaints of sexual abuse by Clergy and Religious of the Catholic Church in New Zealand*, CTH0002007 (1998). See also further versions of A Path to Healing: New Zealand Catholic Bishops Conference and the Congregational Leaders Conference of Aotearoa New Zealand, *Te Houhanga Rongo – A Path to Healing: Principles and Procedures in responding to complaints of sexual abuse by Clergy and Religious of the Catholic Church in New Zealand,* CTH0002009 (March 2001); New Zealand Catholic Bishops Conference and Congregational

Leaders, *Te Houhanga Rongo – A Path to Healing: Principles and procedures in responding to complaints of sexual abuse by Clergy and Religious of the Catholic Church of New Zealand*, CTH0001154 (2007); New Zealand Catholic Bishops Conference and Congregational Leaders, *Te Houhanga Rongo – A Path to Healing: Principles and procedures in responding to complaints of sexual abuse by Clergy and Religious of the Catholic Church in New Zealand*, CTH0001155 (2007 with amendments as at 2010); National Office for Professional Standards, *Te Houhanga Rongo – A Path to Healing: Principles and procedure for responding to complaints of sexual abuse and sexual misconduct against clergy and religious in the Catholic Church in Aotearoa New Zealand*, CTH0001487 (February 2020).

419 New Zealand Catholic Bishops Conference and the Congregational Leaders Conference of Aotearoa New Zealand, *Te Houhanga Rongo – A Path to Healing: Principles and procedure in responding to complaints of sexual abuse by Clergy and Religious of the Catholic Church in New Zealand*, CTH0002007 (1998), pp. 12-13.

420 National Professional Standards Committee, *Proposals for Mixed Commission regarding a national office for abuse complaints,* CTH0001553 (25 February 2003), p. 2. The Mixed Commission includes each bishop and religious leader who are members of the New Zealand Catholic Bishops Conference and Congregational Leaders Conference of Aotearoa New Zealand.

421 Ibid., p. 2.

422 *Witness Statement of Philip Hamlin for National Office of Professional Standards (NOPS) and National Safeguarding and Professional Standards Committee (NSPSC),* WITN0254001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), p. 18.

423 *Transcript of evidence of Closing Statement by the Catholic Church from Faith-based Redress Hearing Phase II*, p. 944.

424 New Zealand Catholic Bishops Conference, *1990 – A Commemoration Year – He Tau Whakamaharatanga Mō Aotearoa* (1 January 1990), www.catholic.org.nz/about-us/bishops-statements/1990-a-commemoration-year-he-tau-whakamaharatanga-mo-aotearoa.

425 *Transcript of evidence of Virginia Noonan for National Office of Professional Standards (NOPS) from Faith-based Redress Hearing Phase II,* TRN0000346 (Royal Commission of Inquiry into Abuse in Care, 25 April 2021), p. 704.

426 National Office of Professional Standards, *Te Houhanga Rongo – A Path to Healing* (February 2020), pp. 2-3.

427 *Witness Statement of Virginia Noonanfor National Office of Professional Standards (NOPS)*, WITN0256001 (Royal Commission of Inquiry into Abuse in Care, 29 January 2021), p. 6.

428 *Transcript of evidence of Dr Thomas Doyle from Faith-based Redress Hearing Phase II*, TRN0000344 (Royal Commission of Inquiry into Abuse in Care, 23 March 2021), p. 525.

429 *Witness Statement of Philip Hamlin,* 21 September 2020, p. 18.

430 Ibid., p. 9; *Transcript of evidence of Virginia Noonan for National Office of Professional Standards (NOPS) from Faith-based Redress Hearing Phase II*, TRN0000345 (Royal Commission of Inquiry into Abuse in Care, 24 March 2021), pp. 681-682.

431 *Witness Statement of Sonja Cooper and Amanda Hill for Cooper Legal,* WITN0094001 (Royal Commission of Inquiry into Abuse in Care, 1 March 2021).

432 *Transcript of evidence of Virginia Noonan from Faith-based Redress Hearing Phase II*, 24 March 2021, p. 685.

433 Ibid., p. 647.

434 *Transcript of evidence of Fr Timothy Duckworth for the Society of Mary from Faith-based Redress Hearing Phase II*, TRN0000346 (Royal Commission of Inquiry into Abuse in Care, 25 March 2021), p. 739.

435 Of two discussions about systemic issues in the committee's minutes, there was no evidence it had taken any action on the matter. At a meeting in November 2017, it noted "the problems that have been caused by repeat offenders" and "failure of bishops to treat seriously the issue of sexual abuse": *Minutes of meeting of Complaints Assessment Committee*, CTH0009043 (28 November 2017), p. 2. At its November 2018 meeting, it had a discussion about systemic issues and did, however, ask the National Office of Professional Standards to complete an inventory of information about offending, and to seek advice from the Christchurch diocese about any complaints against diocesan priests connected to the Order of St John in the 1970s: Minutes of meeting of Complaints Assessment Committee, CTH0009047, (27 November 2018), p. 3.

436 *Transcript of evidence of Cardinal John Dew from Faith-based Redress Hearing Phase II*, 26 March 2021, pp. 829-830.

437 *Transcript of evidence of Virginia Noonan from Faith-based Redress Hearing Phase II*, 24 March 2021, p. 666.

438 Ibid., p. 643.

439 *Transcript of evidence of Cardinal John Dew from Faith-based Redress Hearing Phase II*, 26 March 2021, pp. 823-824.

440 Ibid., p. 826.

441 Ibid., p. 827.

442 Ibid., p. 827.

443 *Transcript of evidence of Virginia Noonan from Faith-based Redress Hearing,* 24 March 2021, p. 678.

444 New Zealand Catholic Bishops Conference and Congregation Leaders Conference of Aotearoa New Zealand, *Te Houhanga Rongo - A Path to Healing* (February 2020), p. 14.

445 New Zealand Catholic Bishops Conference and Congregation Leaders Conference of Aotearoa New Zealand, *Te Houhanga Rongo - A Path to Healing* (February 2020), p. 14; Pope Francis, *Apostolic Letter Issued Motu Proprio: "Vos Estis Lux Mundi"*, (18 May 2021), www.vatican.va/content/francesco/en.html.

446 *A Pastoral Letter to Priests Concerning Certain Aspects of Sexual Misconduct*, CTH0002431 (March 1987), p. 2.

447 See letter from Bishop Patrick Dunn, noting the Marist Brothers had received a flood of complaints but had not paid more than $10,000: Letter from Patrick Dunn, Bishop of Auckland, to Cardinal and Bishops of New Zealand, regarding Profession Standards Committee, CTH0001383 (23 August 2002), p. 1.

448 *Consensus from a Meeting to Discuss the Financial Implication of Sexual Abuse Claims*, CTH0001469 (10 September 2002), p. 1.

449 Ibid.

450 Ibid.

451 Ibid.

452 Ibid., p. 2.

453 Memorandum from Patrick Dunn, Bishop of Auckland, to Cardinals and Bishops, Catholic Church, regarding settlement of abuse cases, CTH0001472 (20 June 2003), p. 2.

454 *Transcript of evidence of Cardinal John Dew from Faith-based Redress Hearing Phase II,* 26 March 2021, p. 828.

455 *Witness Statement of Ms CU*, pp. 13-14.

456 The inquiry has received 47 different policies published by 23 difference church authorities relating to the prevention and response to abuse.

457 *Witness Statement of Sister Susan France for Sisters of Mercy*, WITN0255001 (Royal Commission of Inquiry into Abuse in Care, 18 September 2020), p. 16.

458 Ibid.

459 Ibid.

460 *Witness Statement of Monsignor Brendan Daly*, WITN0934001 (Royal Commission of Inquiry into Abuse in Care, 23 July 2021), p. 15.

461 Ibid.

462 Pope John Paul II, *The Norms of the Motu Proprio: "Sacramentorum Sanctitatis Tutela"*, (30 April 2001); Pope Benedict XVI, revision of *The Norms of the Motu Proprio: "Sacramentorum Sanctitatis Tutela",* (21 May 2010); Pope Francis, *Apostolic Letter Issued Motu Proprio: "Vos Estis Lux Mundi"*, (18 May 2021).

463 *Witness Statement of Monsignor Brendan Daly*, 23 July 2021, p. 40.

464 Code of Canon Law (1983), canon 1722.

465 Code of Canon Law (1983), canon 290.

466 *Witness Statement of Monsignor Brendan Daly*, 23 July 2021, p. 22.

467 For example, see: Letter from Bishop Steve Lowe, Diocese of Hamilton, to Holy See regarding request for dismissal, CTH0002891 (21 December 2017), pp. 9-11.

468 *Transcript of evidence of Cardinal John Dew from Faith-based Redress Hearing Phase II*, 26 March 2021, pp. 815-816.

469 *Witness Statement of Dr Thomas Doyle*, WITN0360001 (Royal Commission of Inquiry into Abuse in Care, 9 March 2021), p. 59.

470 Pope Francis, *Vos Estis Lux Mundi* (7 May 2019).

471 Ibid., art 12 §4.

472 *Transcript of evidence of Cardinal John Dew from Faith-based Redress Hearing Phase II,* 26 March 2021, p. 814.

473 Ibid., p. 813.

474 Ibid., p. 815.

475 Ibid., p. 815.

476 Ibid., p. 815.

477 *Transcript of evidence of Cardinal John Dew from Faith-based Redress Hearing Phase II,* 26 March 2021, p. 815.

478 *Witness Statement of Bill Kilgallon,* WITN0632001 (Royal Commission of Inquiry into Abuse in Care, 10 September 2021), p. 16.

479 *Transcript of evidence of Cardinal John Dew from Faith-based Redress Hearing Phase II,* 26 March 2021, p. 815.

480 *Title G, Canon XIII of Holy Orders in the Anglican Church in Aotearoa, New Zealand & Polynesia* (1992), section 6.1. The Anglican Church does not take direction from overseas but presents itself as in full communion with the Church of England and all other churches of the Anglican Communion.

481 *Witness Statement of Archbishop Philip Richardson for the Anglican Church*, WITN0265001 (Royal Commission of Inquiry into Abuse in Care, 12 February 2021), pp. 11-12.

482 Ibid., pp. 9-10.

483 *Transcript of evidence of Bishop Ross Bay for the Anglican Church from Faith-based Redress Hearing Phase II,* 18 March 2021, p. 280.

484 *Transcript of evidence of Archbishop Don Tamihere and Archbishop Philip Richardson at the Faith-based Redress Hearing Phase II,* TRN0000342 (Royal Commission of Inquiry into Abuse in Care, 19 March 2021), p. 384.

485 *Witness Statement of Bishop Ross Bay for the Anglican Church*, WITN0259001 (Royal Commission of Abuse in Care, 12 February 2021), p. 6; *Transcript of evidence of Bishop Ross Bay from Faith-based Redress Hearing Phase II*, 18 March 2021, pp. 270-271.

486 *Transcript of evidence of Bishop Peter Carrell for the Anglican Church from Faith-based Redress Hearing Phase II*, TRN0000341 (Royal Commission of Inquiry into Abuse in Care, 18 March 2021), pp. 327-328.

487 Anglican Church of Aotearoa, New Zealand and Polynesia/Te Hahi Mihinare ki Aotearoa ki Niu Tireni, ki Nga Moutere o Te Moana Nui a Kiwa, *Addressing Abuse in Church Care, Principles and procedure in responding to complaints of abuse by clergy and officials in institutions run by the Anglican Church of Aotearoa, New Zealand and Polynesia/ Te Hahi Mihinare ki Aotearoa ki Niu Tireni, ki Nga Moutere o Te Moana Nui a Kiwa,* ANG0008541 (2018).

488 Anglican Church of Aotearoa, New Zealand and Polynesia/Te Hahi Mihinare ki Aotearoa ki Niu Tireni, ki Nga Moutere o Te Moana Nui a Kiwa, *Addressing Abuse: Principles and procedure in responding to complaints of abuse,* WITN0265017 (2019).

489 *Transcript of evidence of Archbishop Don Tamihere and Archbishop Philip Richardson from Faith-based Redress Hearing Phase II,* 22 March 2021, p. 438.

490 *He waka eke noa – A waka we are all in together* (Anglican Church, 2020), p. 22. For every $1 of assets held by Tikanga Māori, Tikanga Pākehā holds $28 worth of assets.

491 *Transcript of evidence of Bishop Ross Bay from Faith-based Redress Hearing Phase II,* 18 March 2021, p. 268.

492 *Transcript of evidence of Archbishop Don Tamihere and Archbishop Philip Richardson*, 22 March 2021, pp. 418–419; *Transcript of evidence of Bishop Peter Carrell for the Anglican Church from Faith-based Redress Hearing Phase II,* TRN0000342 (Royal Commission of Inquiry into Abuse in Care, 19 March 2021), p. 337.

493 *Transcript of evidence of Bishop Ross Bay from Faith-based Redress Hearing Phase II*, 18 March 2021, pp. 267–268.

494 *Transcript of evidence of Bishop Ross Bay from Faith-based Redress Hearing Phase II*, 17 March 2021, pp. 224–225.

495 Anglican Church, *He waka eke noa – A waka we are all in together* (2020), p. 22.

496 *Witness Statement of Archbishop Philip Richardson,* p. 31.

497 Christ's College, *Historic Abuse Complaints Policy* (February 2021), www.christscollege.com/assets/Historical-Abuse-Complaints-Policy.pdf.

498 *Transcript of evidence of Archbishop Don Tamihere and Archbishop Philip Richardson from Faith-based Redress Hearing Phase II*, 19 March 2021, p. 396.

499 *Witness Statement of Archbishop Philip Richardson*, p. 38.

500 Ibid.

501 The Anglican Church in Aotearoa, New Zealand and Polynesia, *A New Zealand Prayer Book/He Karakia Mihinare o Aotearoa* – "Ordination Liturgies", WITN0265165, p. 913.

502 *Transcript of evidence of Bishop Ross Bay for the Anglican Church from Faith-based Redress Hearing Phase II,* TRN0000340 (Royal Commission of Inquiry into Abuse in Care, 17 March 2021), pp. 226–228.

503 *Transcript of evidence of Bishop Ross Bay for the Anglican Church from Faith-based Redress Hearing Phase II,* 17 March 2021, pp. 231–232.

504 *Witness Statement of Jacinda Thompson,* WITN0049001 (Royal Commission of Inquiry into Abuse in Care, 30 September 2020), p. 44.

505 *Witness Statement of Bishop Ross Bay,* 12 February 2021, p. 16.

506 Ministry Training School (Bishopdale College) in the Anglican Diocese of Nelson, *A Training Manual for Ministry Standards in the Diocese of Nelson – Version 2006,* ANG0001566.

507 Pauling, Y., *Churches Responding with Integrity to Clergy Sexual Misconduct,* ANG0018822 (1998), p. 8.

508 *Transcript of evidence of Archbishop Don Tamihere and Archbishop Philip Richardson at the Faith-based Redress Hearing Phase II,* 22 March 2021, p. 451.

509 Ibid., p. 452.

510 Called deposition.

511 *Transcript of evidence of Archbishop Don Tamihere and Archbishop Philip Richardson from Faith-based Redress Hearing Phase II,* 22 March 2021, p. 405.

512 Ibid.

513 *Transcript of evidence of Jacinda Thompson from Faith-based Redress Hearing Phase I,* TRN0000333 (Royal Commission of Inquiry into Abuse in Care, 7 December 2020), pp. 443-444; *Transcript of evidence of Archbishop Don Tamihere and Archbishop Philip Richardson for the Anglican Church from Faith-based Redress Hearing Phase II,* 19 March 2021, pp. 390-391.

514 *Transcript of evidence of Archbishop Don Tamihere and Archbishop Philip Richardson from Faith-based Redress Hearing Phase II,* 19 March 2021, p. 390.

515 Ibid.

516 *Witness Statement of Robert Oakly*, WITN0055001 (Royal Commission of Inquiry into Abuse in Care, 4 October 2020), p. 17.

517 *Witness Statement of Margaret Wilkinson,* WITN0008001 (Royal Commission of Inquiry into Abuse in Care, 17 September 2020), p. 15.

518 These figures are based on information we received between May to September 2020 from each entity within the Anglican Church.

519 There also some claims which have no data because the claim was since considered out of scope or have information which cannot be disclosed due to suppression orders.

520 *Transcript of evidence of Bishop Ross Bay from Faith-based Redress Hearing Phase II,* 18 March, p. 241; *Transcript of evidence of Bishop Peter Carrell from Faith-based Redress Hearing Phase II,* 19 March, pp. 332-333.

521 *Transcript of evidence of Bishop Ross Bay from Faith-based Redress Hearing Phase II,* 18 March, p. 253.

522 *Witness Statement of Mrs N,* WITN0052001 (Royal Commission of Inquiry into Abuse in Care, 28 September 2020), p. 20.

523 Letter from Rev. Dr. Patricia Allan to Archbishop Brian Davis regarding sexual abuse in the Anglican Church, ANG0013884_00003 (9 September 1989).

524 Letter from Nerys Parry, psychologist, to Bishop Bruce Moore, Anglican Church, ANG0002742 (8 September 1993).

525 Masters. C and Bingham, E., "Churches taking tough line with clergy who prey", *New Zealand Herald*, EXT0000555 (29 June 2002), p. 1.

526 *Pastoral justice and advocacy – Guidelines for the Church's response to survivors of sexual exploitation by the Clergy,* ANG0017763.

527 *Transcript of evidence of Archbishop Don Tamihere and Archbishop Philip Richardson at the Faith-based Redress Hearing Phase II*, 22 March 2021, p. 423.

528 Letter from Sonja Cooper and Rebecca Hay, Cooper Legal to Reverend Michael Hughes, Anglican Church, regarding establishment of Anglican Church redress process, ANG0004387 (22 December 2016); Letter from Sonja Cooper and Rebecca Hay, Cooper Legal, to Reverend Michael Hughes, Anglican Church, regarding meeting of 30 May 2017, ANG0004388 (20 June 2017).

529 *Witness Statement of Archbishop Philip Richardson*, p. 30.

530 Ibid.

531 *Witness Statement of Bishop Ross Bay*, p. 16.

532 *Witness Statement of Colonel Gerry Walker for The Salvation Army (*Royal Commission of Inquiry into Abuse in Care and Faith Based Institutions, 18 September 2020), p. 22.

533 Ibid., p. 25.

534 Ibid., pp. 8-9.

535 *Witness Statement of Colonel Gerry Walker*, 18 September 2020, p. 6.

536 *Witness Statement of Murray Houston for The Salvation Army*, WITN0250001 (Royal Commission of Inquiry into Abuse in Care, 18 September 2020), p. 42.

537 *Transcript of evidence of Colonel Gerry Walker for The Salvation Army from Faith-based Redress Hearing Phase II,* TRN0000339 (Royal Commission of Inquiry into Abuse in Care, 16 March 2021), p. 119.

538 *Witness Statement of Janet Lowe*, WITN0066001 (Royal Commission of Inquiry into Abuse in Care, 16 September 2020), p. 33.

539 *Transcript of evidence of Murray Houston for The Salvation Army from Faith-based Redress Hearing Phase II*, TRN0000339 (Royal Commission into Abuse in Care, 16 March 2020), p. 127.

540 Letter from Sean O'Sullivan and Jacki Cole, Phillips Fox, to Sonja Cooper, Cooper Legal, regarding Janet Lowe's claim against The Salvation Army, EXT0000367 (29 May 2001).

541 *Witness Statement of Murray Houston*, 18 September 2020, p. 13.

542 Ibid., pp. 13-14.

543 Ibid., p. 17.

544 Ibid., p. 18.

545 *Transcript of evidence of Murray Houston for The Salvation Army from Faith-based Redress Hearing Phase II*, TRN0000340 (Royal Commission of Inquiry into Abuse in Care, 17 March 2021), pp. 189-190. For example, when it stopped having officers attend survivor meetings in uniform, due to understanding the potentially triggering impact that could have on some survivors.

546 *Transcript of evidence of Closing Statement for The Salvation Army from Faith-based Redress Hearing Phase II*, p. 888.

547 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 17 March 2021, pp. 189-190.

548 *Closing submissions on behalf of The Salvation Army regarding the Faith-based Redress Hearing* (Royal Commission of Inquiry into Abuse in Care, 26 March 2020), pp. 13-14.

549 *Witness Statement of Murray Houston*, 18 September 2020, p. 29.

550 Ibid., p. 22.

551 Ibid., p. 9.

552 Ibid., pp. 10-11. Claims that have not formally been resolved remain 'open' and a claimant may choose to further progress their claim. Some claimants choose not to progress their claim or seek a redress settlement from The Salvation Army.

553 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 17 March 2021, p. 175.

554 *Transcript of evidence of Colonel Gerry Walker from Faith-based Hearing Phase II*, 16 March 2021, pp. 100-101.

555 *Witness Statement of Murray Houston*, 18 September 2020, p. 39.

556 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II,* 16 March 2021, pp. 144, 153; *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 17 March 2021, p. 180.

557 Letter from Sonja Cooper, Cooper Legal, to The Commissioner, The Salvation Army, regarding concerns about Mr Houston, SAL0001746 (21 January 2005); Letter from Sonja Cooper, Cooper Legal to General Linda Bond, The Salvation Army, regarding concerns about The Salvation Army New Zealand's approach to allegations of sexual abuse, SAL0001748 (30 November 2011).

558 *Transcript of evidence of Murray Houston from Faith-based Hearing Phase II*, 16 March 2021, p. 151.

559 *Witness Statement of Mr N* (Royal Commission of Inquiry into Abuse in Care, WITN0070001, 8 September 2020), p. 15.

560 *Transcript of evidence of Murray Houston from Faith-Based Redress Hearing Phase II*, 16 March 2021, p. 131.

561 The Salvation Army, "Royal Commission" (2021), www.salvationarmy.org.nz/about-us/complaints-privacy/royal-commission.

562 *Witness Statement of Murray Houston*, 18 September 2020, pp. 36-37.

563 Ibid., p. 42; *Witness Statement of Colonel Gerry Walker*, 18 September 2020, p. 6.

564 *Selection of data providing information on settlements in The Salvation Army redress process,* MSC0002219, p. 3.

565 *Witness Statement of Murray Houston*, 18 September 2020, p. 47.

566 Ibid.

567 $54,350 as at 10 September 2020: *Selection of data providing information on settlements in The Salvation Army redress process,* MSC0002219, p. 3. The Commission notes that in some circumstances, financial settlements have included a payment toward past or future counselling costs, but the financial settlement has not required the payment to be put toward counselling.

568 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 17 March 2021, p. 186.

569 Ibid., p. 187.

570 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 16 March 2021, p. 138. It was subsequently proposed that the low number of instances of this is likely due to the fact that the programme was only established in 2012.

571 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 17 March 2021, pp. 180, 201-202; *Transcript of evidence of Colonel Gerry Walker from Faith-based Redress Hearing Phase II*, TRN0000338 (Royal Commission of Inquiry into Abuse in Care, 15 March 2021), pp. 50-51.

572 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 17 March 2021, pp. 180-181.

573 *Transcript of evidence of Closing Statement for The Salvation Army from Faith-based Redress Hearing Phase II*, pp. 888, 891.

574 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 16 March 2021, p. 140.

575 For example, see: *Witness Statement of Gloria White*, WITN0068001 (Royal Commission of Inquiry into Abuse in Care, 23 September 2020), p. 23.

576 *Witness Statement of Murray Houston for The Salvation Army*, WITN0250022 (Royal Commission of Inquiry into Abuse in Care, 29 January 2021), p. 21.

577 Ibid., p. 22.

578 *Witness Statement of Murray Houston*, 18 September 2020, p. 45.

579 *Witness Statement of Mr N*, p. 15.

580 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 16 March 2021, p. 151.

581 Ibid., p. 150; *Transcript of evidence of Colonel Gerry Walker from Faith-based Redress Hearing Phase II*, 15 March 2021, p. 54.

582 *Transcript of evidence of Colonel Gerry Walker from Faith-based Redress Hearing Phase II*, 15 March 2021, p. 54.

583 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II,* 16 March 2021, p. 159.

584 *Transcript of evidence of Colonel Gerry Walker for The Salvation Army from Faith-based Redress Hearing Phase II*, 15 March 2021, p. 53.

585 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 16 March 2021, p. 155-156.

586 *Transcript of evidence of Colonel Gerry Walker from Faith-based Redress Hearing Phase II*, 15 March 2021, p. 48.

587 *The Salvation Army and the Treaty of Waitangi,* SAL0000123 (March 1997).

588 *Witness Statement of Murray Houston*, 18 September 2020, p. 46; *Witness Statement of Murray Houston*, 29 January 2021, p. 12.

589 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 16 March 2021, p. 153.

590 *Witness Statement of Murray Houston*, 18 September 2021, pp. 46-47.

591 Presbyterian Support Central, *Deed of settlement and restoration*, PSC0000018 (February 2007).

592 New Zealand Catholic Bishops Conference and Congregational Leaders Conference of Aotearoa New Zealand, *Te Houhanga Rongo - A Path to Healing* (2020), p. 3.

593 Ibid., p. 14.

594 Email from Bishop Ross Bay to Rev Dr Patricia Allan regarding completion of questionnaire, ANG0014571 (31 July 2019).

595 *Transcript of evidence of Georgina Sammons, Tanya Sammons and Hope Curtin from State Redress Hearing Phase I*, 25 September 2020, p. 222.

596 *Witness Statement of Loretta Ryder,* WITN0267001 (Royal Commission of Inquiry into Abuse in Care, 30 March 2021), p. 26.

597 *Witness Statement of Paora Sweeney*, WITN0007001 (Royal Commission of Inquiry into Abuse in Care, 30 November 2020), p. 28.

598 *Witness Statement of Gwyneth Beard*WITN0159001 (Royal Commission of Inquiry into Abuse in Care, 26 March 2021), p. 24.

599 *Witness Statement of Neta Kerepeti*, WITN0427001 (Royal Commission of Inquiry into Abuse in Care, 22 April 2021), p. 24.

600 Ibid.

601 Ibid., p. 28.

602 *Witness Statement of Loretta Ryder*, p. 30.

603 *Witness Statement of Neta Kerepeti*, p. 27.

604 *Witness Statement of Maryann Rangi*, WITN0412001 (Royal Commission of Inquiry into Abuse in Care, 13 April 2021), p. 24.

605 *Witness Statement of Terry King*, WITN0411001 (Royal Commission of Inquiry into Abuse in Care, 10 August 2021), pp. 15-16.

606 *Witness Statement of Ms CU*, p. 25.

607 *Witness Statement of David Crichton*, WITN0456001 (Royal Commission of Inquiry into Abuse in Care, 9 July 2021), p. 26.

608 *Witness Statement of Fa'amoana Luafutu*, WITN0555001 (Royal Commission of Inquiry into Abuse in Care, 5 July 2021), p. 14.

609 Ibid.

610 *Transcript of evidence of Frances Tagaloa from Faith-based Redress Hearing Phase I,* p. 55.

611 *Witness Statement of Ms CU*, p. 22.

612 *Witness Statement of Hakeagapuletama Halo*, WITN0363001 (Royal Commission of Inquiry into Abuse in Care, 25 March 2020), p. 16.

613 *Witness Statement of Jarrod Burrell*, WITN0609001 (Royal Commission of Inquiry into Abuse in Care, 9 August 2021), p. 7.

614 Ibid.

615 *Transcript of evidence of Sir Robert Martin from Contextual Hearing* (Royal Commission of Inquiry into Abuse in Care, 5 November 2019), p. 705.

616 *Ms BU,* RC-01356-T1D1 (Royal Commission of Inquiry into Abuse in Care 24 November 2020), p. 69.

617 *Witness Statement of Neta Kerepeti*, p. 29.

618 *Individual redress submission of Matthew Whiting*, RC-01612-C4P2 (Royal Commission of Inquiry into Abuse in Care, 2021), p. 2.

619 *Transcript of evidence of Luamanuvao Dame Winnie Laban from Tulou - Our Pacific Voices: Tatala E Pulonga* (Royal Commission of Inquiry into Abuse in Care, 19 July 2021), p. 14.

620 *Witness Statement of Helen Boynton*, WITN0040001 (Royal Commission of Inquiry into Abuse in Care, 24 November 2020), p. 14.

621 *Witness Statement of Ms CU*, pp. 32-33.

622 Ibid., p. 33.

623 *Witness Statement of James Packer*, WITN0081001 (Royal Commission of Inquiry into Abuse in Care, 13 February 2020), p. 13.

624 *Transcript of evidence of Colonel Gerry Walker for The Salvation Army from Faith-Based Redress Hearing Phase II*, TRN0000339 (Royal Commission of Inquiry into Abuse in Care, 16 March 2021), p. 83.

625 *Witness Statement of Ms T,* WITN0119001 (Royal Commission of Inquiry into Abuse in Care, 12 March 2021), p. 22.

626 Ibid.

627 *Witness Statement of Ms BA*, WITN0589001 (Royal Commission of Inquiry into Abuse in Care, 31 May 2021), p. 9.

628 *Witness Statement of Mark Goold*, WITN0116001 (Royal Commission of Inquiry into Abuse in Care, 8 June 2021), p. 16.

629 Ibid., p. 13.

630 *Witness Statement of Ms BW*, WITN0378001 (Royal Commission of Inquiry into Abuse in Care, 15 July 2021), p. 16.

631 *Transcript of evidence of Jacinda Thompson from Faith-based Redress Hearing Phase I*, TRN0000333 (Royal Commission of Inquiry into Abuse in Care, 7 December 2020), pp. 460, 463.

632 *Witness Statement of Sonja Cooper and Amanda Hill for Cooper Legal from State Redress Hearing Phase I* WITN0094001 (Royal Commission of Inquiry into Abuse in Care, 31 January 2020), p. 207.

633 *Transcript of evidence of Jacinda Thompson from Faith-based Redress Hearing Phase I*, p. 444.

634 *Witness Statement of Joan Bellingham,* WITN0083001 (Royal Commission of Inquiry into Abuse in Care, 25 February 2020), p. 11.

635 *Witness Statement of Robert Oakly*, p. 15.

636 *Witness Statement of Kathleen O'Connor*, WITN0428001 (Royal Commission of Inquiry into Abuse in Care, 19 May 2021), p. 13.

637 *Witness Statement of Mr N*, p. 16.

638 *Witness Statement of Mr L*, WITN0032001 (Royal Commission of Inquiry into Abuse in Care, 7 August 2020), p. 8.

639 *Witness Statement of Hone Tipene*, WITN0724001 (Royal Commission of Inquiry into Abuse in Care, 22 September 2021), p. 35.

640 *Witness Statement of Neta Kerepeti*, p. 28.

641 *Witness Statement of Ms BA*, p. 10.

642 *Witness Statement of Mrs N*, WITN0052001 (Royal Commission of Inquiry into Abuse in Care, 28 September 2020), pp. 13, 19.

643 *Witness Statement of James Packer*, p. 7.

644 *Witness Statement of Mark Goold*, p. 14.

645 *Witness Statement of Kathleen O'Connor*, p. 16.

646 *Witness Statement of James Packer*, p. 14.

647 *Transcript of evidence of Frances Tagaloa from Faith-based Redress Hearing Phase I*, p. 45.

648 *Witness Statement of Keith Wiffin*, WITN0080001 (Royal Commission of Inquiry into Abuse in Care, 12 February 2020), pp. 12-13.

649 *Witness Statement of Mary Marshall*, pp. 1, 15.

650 *Witness Statement of Wiremu Waikari*, WITN0204001 (Royal Commission of Inquiry into Abuse in Care, 9 July 2021), p. 51.

651 *Witness Statement of Sonja Cooper and Amanda Hill for Cooper Legal,* WITN0094394 (Royal Commission of Inquiry into Abuse in Care, 6 March 2020), p. 28.

652 *Witness Statement of Phillipa Wilson,* WITN0142001 (Royal Commission of Inquiry into Abuse in Care, 9 June 2021), p. 16.

653 *Witness Statement of Ms BA*, p. 12.

654 *Witness Statement of Chassy Duncan*, WITN0093001 (Royal Commission of Inquiry into Abuse in Care, 24 February 2020), p. 17.

655 *Witness Statement of Mary Marshall*, p. 12.

656 *Transcript of evidence of Kerry Johnson from State Redress Hearing Phase I*, TRN0000004 (Royal Commission of Inquiry into Abuse in Care, 28 September 2020), p. 277.

657 *Witness Statement of Phillipa Wilson,* p. 17.

658 Ibid., p. 18.

659 *Witness Statement of Mr BY*, WITN0241001 (Royal Commission of Inquiry into Abuse in Care, 23 July 2021), p. 7.

660 Ibid.

661 *Witness Statement of Marc*, WITN0001001 (Royal Commission of Inquiry into Abuse in Care, 14 September 2020), p. 20; *Witness Statement of John*, WITN0023001 (Royal Commission of Inquiry into Abuse in Care, 26 August 2020), p. 15.

662 *Witness Statement of Ms K*, p. 16.

663 *Witness Statement of Mrs N*, p. 16.

664 *Witness Statement of William Wilson*, WITN0419001 (Royal Commission of Inquiry into Abuse in Care, 6 July 2021), p. 18.

665 *Transcript of evidence of Jacinda Thompson from Faith-based Redress Hearing Phase I*, p. 470.

666 Ibid.

667 *Witness Statement of Mr BD*, WITN0003001 (Royal Commission of Inquiry into Abuse in Care, 17 September 2020), p. 6.

668 *Witness Statement of Father Timothy Duckworth for the Society of Mary*, WITN0253001 (Royal Commission of Inquiry into Abuse in Care, 23 September 2020), p. 22; *Witness Statement of Brother Peter Horide for the Marist Brothers,* WITN0257001 (Royal Commission of Inquiry into Abuse in Care, 12 February 2021), p. 10.

669 *Witness Statement of Mr BE*, WITN0397001 (Royal Commission of Inquiry into Abuse in Care, 24 May 2021), p. 19.

670 *Witness Statement of Ms CU*, pp. 31-32.

671 *Witness Statement of Robert Donaldson*, WITN0011001 (Royal Commission of Inquiry into Abuse in Care, 24 August 2020), p. 9.

672 *Transcript of evidence of Louise Deans from Faith-based Redress Hearing Phase I,* TRN0000335 (Royal Commission of Inquiry into Abuse in Care, 9 December 2020), p. 704.

673 Ibid., pp. 700-710.

674 *Witness Statement of Ms C*, WITN0062001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), p. 18.

675 *Witness Statement of Anne Hill,* WITN0013001 (Royal Commission of Inquiry into Abuse in Care, 28 September 2020), p. 13.

676 Ibid.

677 WelCom, "Statement of Dominican Prior Provincial" *WelCom*, CTH0010166 (August 2018).

678 *Witness Statement of Anne Hill,* p. 15.

679 Ibid., p. 13.

680 Ibid., p. 15.

681 *Transcript of evidence of Keith Wiffin from State Redress Hearing Phase I,* TRN0000001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), p. 31.

682 *Witness Statement of Keith Wiffin* (Royal Commission of Inquiry into Abuse in Care, 29 October 2019), p. 7.

683 *Witness Statement of James Packer*, pp. 2-3, 9.

684 *Witness Statement of Mr F*, WITN0025001 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), p. 9.

685 *Closing statement on behalf of Network of Survivors of Abuse in Faith-based Institutions* (Royal Commission of Inquiry into Abuse in Care, 29 March 2021), p. 3.

686 Ibid.

687 *Individual redress submission of Matthew Whiting*, p. 1.

688 *Witness Statement of Ms C*, p. 19.

689 *Witness Statement of Mr BF*, WITN0022001 (Royal Commission of Inquiry into Abuse in Care, 20 September 2020), p. 13.

690 *Witness Statement of Tamzin Ford*, WITN0130001 (Royal Commission of Inquiry into Abuse in Care, 29 September 2020), p. 15.

691 *Witness Statement of Mr F*, p. 14.

692 *Witness Statement of Mr F*, p. 14.

693 *Witness Statement of Toni Jarvis*, WITN0145001 (Royal Commission of Inquiry into Abuse in Care, 12 April 2021), p. 31.

694 *Witness Statement of Wiremu Waikari*, p. 51.

695 *Witness Statement of Kerry Johnson*, WITN0084001 (Royal Commission of Inquiry into Abuse in Care, February 2020), p. 9.

696 *Witness Statement of Linda Hrstich-Meyer,* 27 January 2020, p. 21.

697 *Transcript of evidence of Helen Hurst from State Redress Hearing Phase I*, p. 728.

698 *Witness Statement of Kathleen O'Connor*, p. 13.

699 *Witness Statement of Phillipa Wilson*, p. 14.

700 *Witness Statement of Ms K,* pp. 13-14.

701 *Witness Statement of Mary Marshall*, p. 15.

702 *Witness Statement of Chassy Duncan*, WITN0093059 (Royal Commission of Inquiry into Abuse in Care, August 2020), p. 2.

703 *Witness Statement of Ms BA*, p. 9.

704 *Witness Statement of Mr BY*, p. 7.

705 *Witness Statement of Kevin England*, WITN0121001 (Royal Commission of Inquiry into Abuse in Care, 28 January 2021), p. 31.

706 *Transcript of evidence of Chassy Duncan from State Redress Hearing Phase I*, TRN0000002 (Royal Commission of Inquiry into Abuse in Care, 23 September 2020, p. 99.

707 *Witness Statement of Roy Takiaho*, WITN0071001 (Royal Commission of Inquiry into Abuse in Care, 10 September 2020), p. 10.

708 *Witness Statement of Gloria White*, WITN0068001 (Royal Commission of Inquiry into Abuse in Care, 23 September 2020), pp. 22-24.

709 *Witness statement of Wiremu Waikari*, p. 52.

710 *Witness Statement of Frankie Vegas*, WITN0433001 (Royal Commission of Inquiry into Abuse in Care, 28 May 2021), p. 8.

711 *Transcript of evidence of Georgina Sammons, Tanya Sammons and Hope Curtin from State Redress Hearing Phase I*, 25 September 2020, pp. 210-211.

712 *Witness Statement of Toni Jarvis*, p. 37.

713 *Witness Statement of Mr A*, p. 11.

714 *Witness Statement of Roy Takiaho*, p. 9.

715 *Witness Statement of Ms BA*, p. 10.

716 *Witness Statement of Earl White,* WITN0009001 (Royal Commission of Inquiry into Abuse in Care, 15 July 2020), p. 24.

717 *Witness Statement of Mark Goold,* p. 14.

718 *Witness Statement of Anthony Waller,* WITN0015001 (Royal Commission of Inquiry into Abuse in Care, 11 August 2020), pp. 15-16.

719 Ibid., p. 16.

720 *Witness Statement of Sonja Cooper and Amanda Hill*, 6 March 2020, p. 23.

721 *Witness statement of Mr BY*, p. 8.

722 *Witness Statement of Frankie Vegas*, p. 9.

723 *Witness Statement of David Crichton*, p. 27.

724 Ibid, p. 29.

725 *Witness Statement of Tanya Sammons and Georgina Sammons,* 24 February 2020, pp. 8-9.

726 *Witness Statement of Loretta Ryder,* p. 27.

727 *Witness Statement of Mr A*, p. 8.

728 Ibid., pp. 8, 10. The Salvation Army did offer assistance with reintegration after prison but noted that it needed to be assured that Mr A was prepared to engage fully.

729 *Witness Statement of Ms AF*, WITN0658001 (Royal Commission of Inquiry into Abuse in Care, 13 August 2021), p. 14.

730 *Witness Statement of Keith Wiffin*, 12 February 2020, p. 15.

731 *Witness Statement of Ms T*, p. 23.

732 *Witness Statement of Dr Rawiri Waretini-Karena,* p. 9.

733 *Witness Statement of Neta Kerepeti*, p. 26.

734 *Witness Statement of Mr AX,* WITN0016001 (Royal Commission of Inquiry into Abuse in Care, 7 August 2020), p. 15.

735 *Witness statement of Tanya Sammons and Georgina Sammons*, p. 18.

736 *Witness Statement of Darrin Timpson,* WITN0076001 (Royal Commission of Inquiry into Abuse in Care, 25 September 2020), p. 13.

737 *Witness Statement of Judith Perrott*, WITN0579001 (Royal Commission of Inquiry into Abuse in Care, 3 June 2021), p. 12.

738 *Witness Statement of Tanya Sammons and Georgina Sammons*, p. 15.

739 *McGougan v DePuy International Ltd* [2018] NZCA 91, [2018] 2 NZLR 916.

740 *J v Crown Health Financing Agency* [2008] NZHC 81 at [621].

741 *Limitation Act 1950,* No. 65, s 4, www.legislation.govt.nz/act/public/1950/0065/latest/whole.html.

742 The court can grant such leave "if it thinks it is just to do so... where it considers that delay in bringing the action was occasioned by mistake... or by any other reasonable cause or that the intended defendant was not materially prejudiced in his defence or otherwise by the delay". See: *Limitation Act 1950,* No. 65, s 4(7), www.legislation.govt.nz/act/public/1950/0065/latest/whole.html.

743 The *Limitation Act 2010* also introduced some amendments to the 1950 Act in relation to claims made after 2011 (for acts or omissions before 2011). Section 23B included creating an end date for when claims can be brought, either 15 years after the date of abuse or five years after the 2010 Act came into force, whichever comes later, subject to the discretion set out in section 23C.

744 More specifically, this applies in cases involving sexual abuse of a child or non-sexual abuse of a child by a parent, step-parent or legal guardian, or a close relative or close associate of a parent, step-parent or guardian. See: section 17 of the *Limitation Act 2010* and section 23C of the *Limitation Act 1950*.

745 *W & W v Attorney-General* [2010] NZSC 69 at [2].

746 See: Section 6 of the *Mental Health Amendment Act 1935*, No. 7, www.nzlii.org/nz/legis/hist_act/mdaa193526gv1935n7320/ (which amended the *Mental Health Act 1911*) and section 124 of the *Mental Health Act 1969*, No. 16, www.nzlii.org/nz/legis/hist_act/mha19691969n16155/. Section 124 of the *Mental Health Act 1969* expressly included the Crown in this immunity.

747 This period does not include, for example, time when the person was still detained as a "mentally disordered person" - see section 6(4) of the Mental Health Amendment Act 1935 and section 124(4) of the Mental Health Act 1969.

748 Obiter in *J v Crown Health Financing Agency* Wellington HC CIV-2000-485-876, 8 February 2008 at [599]-[611]; *Witness Statement of Sonja Cooper and Amanda Hill*, 31 January 2020, pp. 64-65.

749 Law Commission, *A new Crown Civil Proceedings Act for New Zealand* (2014), p. 8.

750 *Witness Statement of Sonja Cooper and Amanda Hill,* 31 January 2020, pp. 16-17.

751 *White v Attorney-General* HC Wellington CIV 1999-485-85 (28 November 2007) at [434].

752 For an example of a case in which harm such as the loss of cultural identity arising out of an unlawful removal of a child from his family was recognised by a court, see *Trevorrow v State of South Australia* [2007] SASC 285.

753 *Witness Statement of Earl White,* 15 July 2020, p. 12.

754 The Legal Services Act 2011, which came into effect on 1 July 2011, disestablished the agency. The administration of legal aid was transferred to the Ministry of Justice.

755 *Witness Statement of Sonja Cooper and Amanda Hill,* 31 January 2020, p. 61.

756 Note that this is not the duration of the entire case, the Ministry of Social Development's total legal fees are higher than this figure.

757 Mirfin-Veitch, B., Diesfeld, K., Gates, S., and Henaghan, M., *Developing a more responsive legal system for people with intellectual disability in New Zealand* (Donald Beasley Institute, 2014), p. 67.

758 This term has no statutory authority. ACC coined the term for operational purposes because such claims involved the disclosure of particularly sensitive information.

759 *Accident Compensation Act 2001*, No. 49, s 27, www.legislation.govt.nz/act/public/2001/0049/latest/DLM99494.html .

760 *Accident Compensation Act 2001,* No. 49, ss 21 and 21A, www.legislation.govt.nz/act/public/2001/0049/latest/DLM99494.html.

761 *Accident Compensation Act 2001,* No. 49, s 36(1), www.legislation.govt.nz/act/public/2001/0049/latest/DLM99494.html.

762 Figures relating to sensitive claims lodged with ACC all refer to the total number of claims lodged, as opposed to the number of successful claims. These figures relate to all claimants and are not confined to just abuse in care claims. Despite this, the figures paint us a clear picture of the experiences of survivors bringing sensitive claims in the ACC system. See: ACC, *ACC response to section 20 Notices to Produce dated 23 December 2020* (5 March 2020), p. 5.

763 *ACC response to section 20 Notices to Produce dated 23 December 2020*, p. 5; Bradley, A., "Only 32% of sexual abuse and assault claims make it through ACC system," *Radio New Zealand* (18 May 2021), www.rnz.co.nz/news/national/442780/only-32-of-sexual-abuse-and-assault-claims-make-it-through-acc-system.

764 Cardwell, H., "Unprecedented demand from sex abuse victims for ACC support: 'It makes you want to cry'" *Radio New Zealand* (29 September 2021), www.rnz.co.nz/news/national/452523/unprecedented-demand-from-sex-abuse-victims-for-acc-support-it-makes-you-want-to-cry.

765 Cardwell, H., "Unprecedented demand from sex abuse victims for ACC support: 'It makes you want to cry'," www.rnz.co.nz/news/national/452523/unprecedented-demand-from-sex-abuse-victims-for-acc-support-it-makes-you-want-to-cry.

766 *ACC response to section 20 Notices to Produce dated 23 December 2020,* p. 3.

767 Memorandum from ACC aide to Hon Carmel Sepuloni, Minister for ACC, *ACC's delivery to priority populations: Part 4 - Disabled people* (4 June 2021), p. 3.

768 ACC has discretion to pay a five year advance on an independence allowance, however they do not always do this. See: John Miller Law, *Issues faced by ACC claimants* (Royal Commission of Inquiry into Abuse in Care, 2021), p. 19.

769 *ACC response to section 20 Notices to Produce dated 23 December 2020*, pp. 4-5.

770 Ibid.

771 Ibid.

772 *Witness Statement of Kathleen O'Connor,* p. 12.

773 *Individual redress submission of Matthew Whiting*, RC-01612-C4P2 (Royal Commission of Inquiry into Abuse in Care), p. 2.

774 *ACC response to section 20 Notices to Produce dated 23 December 2020*, p. 6.

775 Armstrong, H., *Matters relating to ACC and survivors of abuse in care (as defined in the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018*) (Royal Commission of Inquiry into Abuse in Care, 2021), pp. 11-12.

776 Ibid., 13.

777 *Individual redress submission of Matthew Whiting*, p. 3.

778 *Witness Statement by Phillipa Wilson*, WITN0142001 (Royal Commission of Inquiry into Abuse in Care, 9 June 2021), p. 11.

779 *Witness Statement of Frankie Vegas,* WITN0433001 (Royal Commission into Abuse in Care, 28 May 2021), p. 16.

780 *Witness Statement of Leoni McInroe,* WITN0096001 (Royal Commission into Abuse in Care, 31 July 2020), p. 24.

781 *Witness Statement of Ms K,* WITN0045012 (Royal Commission of Inquiry into Abuse in Care, 17 November 2020), p. 6.

782 *Witness Statement of Ann-Marie Shelley,* WITN0002010 (Royal Commission of Inquiry into Abuse in Care, 17 June 2021), p. 2.

783 Witness Statement of Kevin England, WITN0121002 (Royal Commission into Abuse in Care, 11 May 2021), p. 2.

784 *Witness Statement of Kathleen O'Connor,* p. 13.

785 Bradley, A., "Man horrified 92 ACC staff accessed his sensitive claim file," *Radio New Zealand* (12 October 2021), www.rnz.co.nz/news/in-depth/453360/man-horrified-92-acc-staff-accessed-his-sensitive-claim-file.

786 *ACC response to section 20 Notices to Produce dated 23 December 2020*, p. 2.

787 Armstrong, H., *Matters relating to ACC and survivors of abuse in care (as defined in the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018)*, p. 20.

788 Ibid.

789 Although some of these costs can be recovered at the end of the review process, the claimant is required to pay this money up-front, which is not always feasible.

790 For the financial year of 2020/2021, an increase over the $8.62M budget for 2019/2020. See: *ACC response to section 20 Notices to Produce dated 23 December 2020*, p. 3.

791 For example: *Witness Statement of Malcolm Richards*, WITN0335001 (Royal Commission of Inquiry into Abuse in Care, 31 March 2021), p. 19; *Transcript of evidence of Rangi Wickliffe from Lake Alice Child and Adolescent Unit Hearing*, TRN0000388 (Royal Commission of Inquiry into Abuse in Care, 15 June 2021), pp. 113-114.

792 For example: *Witness Statement of Sharyn Collis,* WITN0344001 (Royal Commission of Inquiry into Abuse in Care, 19 March 2021), p. 2; *Transcript of evidence of Georgina Sammons, Tanya Sammons and Hope Curtin from State Redress Hearing Phase I*, p. 198.

793 *Witness Statement of Donald Ku*, WITN0324015 (Royal Commission of Inquiry into Abuse in Care, 14 May 2021), p. 14.

794 *Draft Witness Statement of Ms LL (Deceased),* WITN0349001 (Royal Commission of Inquiry into Abuse in Care, prepared 23 November 2020, survivor passed away prior to finalisation), pp. 9-10.

795 *Witness Statement of Charlie Symes,* WITN0320001(Royal Commission of Inquiry into Abuse in Care, 21 March 2021), p. 8.

796 *Witness Statement of Ann-Marie Shelley,* 6 August 2020, pp. 12-13.

797 *Witness Statement of Keith Wiffin,* WITN0080001 (Royal Commission of Inquiry into Abuse in Care, 12 February 2020), p. 12.

798 Crown Law, *Solicitor-General's Guidelines for Prosecuting Sexual* Violence (1 July 2020); New Zealand Government, *Improving court process for victims of sexual violence* (30 August 2017), www.beehive.govt.nz/release/improving-court-process-victims-sexual-violence; Gravitas Research and Strategy Limited, *Evaluation of the Sexual Violence Court Pilot* (Ministry of Justice, 2019).

799 *Witness statement of Frankie Vegas*, p. 7.

800 Ibid.

801 Before making a claim to the tribunal, a claimant must make a complaint to one of the following: the Human Rights Commission, the Privacy Commissioner or the Health and Disability Commissioner.

802 Human Rights Act 1993, No. 82, s 105(1), www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html.

803 For example: *Hammond v Credit Union Baywide* [2015] NZHRRT 6 at [183].

804 *Witness Statement of Trish Grant of IHC*, WITN0092001 (Royal Commission of Inquiry into Abuse in Care), pp. 3, 9-10.

805 Ibid., p. 3.

806 *Witness Statement of Jacinda Thompson,* WITN0049001 (Royal Commission of Inquiry into Abuse in Care, 30 September 2020), pp. 33-34.

807 Ibid., p. 37.

808 *Witness Statement of Jacinda Thompson*, p. 37; *Transcript of evidence of Rosslyn Noonan from Contextual Hearing* (Royal Commission of Inquiry into Abuse in Care, 6 November 2019), pp. 991-992; *Witness Statement of Rosslyn Noonan* (Royal Commission of Inquiry into Abuse in Care, 4 November 2019), p. 7; *Transcript of evidence of Trish Grant for IHC from State Redress Hearing Phase I* (Royal Commission of Inquiry into Abuse in Care, 28 September 2020), p. 298.

809 The Office of Human Rights Proceedings can provide legal representation to applicants wishing to take unlawful discrimination proceedings in the tribunal under the Human Rights Act 1993.

810 *Transcript of evidence of Trish Grant from State Redress Hearing Phase I,* p. 299.

811 *Witness Statement of Jacinda Thompson*, pp. 35-36.

812 *Transcript of evidence of Georgina Sammons, Tanya Sammons and Hope Curtin from State Redress Hearing Phase I*, p. 215.

813 *Witness Statement of Peter Boock*, WITN0289001 (Royal Commission of Inquiry into Abuse in Care, 19 May 2021), pp. 23-24; Letter from the Office of the Ombudsman to Peter Boock, CRM0008845 (30 September 2019), p. 1.

814 *Witness Statement of Sonja Cooper and Amanda Hill,* 31 January 2020, pp. 150-151.

815 The sisters received a 'provisional response' from the Ombudsman on 27 July 2015. See: *Witness Statement of Tanya Sammons and Georgina Sammons*, p. 22.

816 Waitangi Tribunal, *Decision on applications for an urgent hearing concerning the settlement of grievances of Māori children placed in state care and the contemporary actions of Oranga Tamariki*, p. 23.

817 Binding recommendations can be made concerning Crown-forest rental lands and State-owned enterprises land.

818 *Witness Statement of GRO-A-5*, WITN0050001 (Royal Commission of Inquiry into Abuse in Care, 21 October 2020), p. 9.

819 Grievance and advocacy processes are outlined in sections 15 and 16 of the Oranga Tamariki (Residential Care) Regulations 1996.

820 Office of the Children's Commissioner, "Royal Commission – Redress Hearings: Independent monitoring of the services provided to mokopuna who come within the scope of the Oranga Tamariki Act 1989" (20 August 2021), p. 6.

821 Submission of Judge Andrew Becroft for the Office of the Children's Commissioner, CRM0000744 (6 October 2019), p. 4.

822 *Transcript of evidence of Keith Wiffin from State Redress Hearing Phase I,* TRN0000006 (Royal Commission of Inquiry into Abuse in Care, 21 September 2020), p. 25.

823 *Transcript of evidence of Keith Wiffin from State Redress Hearing Phase I*, p. 25.

824 CLAN NZ, "Submission to the Social Services Committee on The Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill" (3 March 2017), p. 1, appended to *Witness Statement of Rosslyn Noonan* (Royal Commission of Inquiry into Abuse in Care, 4 November 2019).

825 *Transcript of evidence of Ms T from Abuse in State children's residential care hearing,* TRN0000316 (Royal Commission of Inquiry into Abuse in Care, 4 May 2021), p. 169.

826 *Witness Statement of David Crichton*, p. 31.

827 Winter, Dr S., "Redressing historical abuse in New Zealand: A comparative critique," *Political Science 70*, no. 10 (2021), 1-25, p. 5.

828 *Transcript of evidence of Sonja Cooper and Amanda Hill for Cooper Legal from State Redress Hearing Phase I,* TRN0000009 (Royal Commission of Inquiry into Abuse in Care, 30 September 2020), p. 441.

829 *Witness Statement of James Packer*, WITN0081001 (Royal Commission of Inquiry into Abuse in Care, 13 February 2020), p. 8.

830 Henwood, Judge C., *Some memories never fade: final report of the Confidential Listening and Assistance Service* (Confidential Listening and Assistance Service, 2015), p. 20.

831 *Witness Statement of Hone Tipene*, pp. 33-35.

832 *Witness Statement of David Crichton*, p. 31.

833 Winter, Dr. S., "Redressing historical abuse in New Zealand: A comparative critique," p. 5.

834 *Witness Statement of Sonja Cooper and Amanda Hill,* 31 January 2020, p. 148.

835 Ibid., pp. 148-149.

836 *Witness Statement of Linda Hrstich-Meyer*, 27 January 2020, p. 17.

837 Ibid., p. 18.

838 Ibid.

839 *Witness Statement of Patrick Stevens,* WITN0085001 (Royal Commission of Inquiry into Abuse in Care, 28 February 2020), p. 7.

840 *Transcript of evidence of Trish Grant for IHC from State Redress Hearing Phase I,* p. 307.

841 *Witness Statement of James Packer*, p. 12.

842 *Witness Statement of Ms AF* (Royal Commission of Inquiry into Abuse in Care, 13 August 2021), p. 3.

843 *Witness Statement of Mary O'Hagan* (Royal Commission of Inquiry into Abuse in Care, 14 October 2019), referring to Egan Bidois, p. 20.

844 *Transcript of evidence of Mr X from Abuse in State children's residential care hearing*, TRN0000315 (Royal Commission of Inquiry into Abuse in Care, 3 May 2021), pp. 30-31.

845 *Witness Statement of Mr CE*, WITN0552001 (Royal Commission of Inquiry into Abuse in Care, 8 July 2021), p. 16.

846 *Mr AY,* WITN0432 (Royal Commission of Inquiry into Abuse in Care), p. 8.

847 *Mr AZ,* WITN0431 (Royal Commission of Inquiry into Abuse in Care), p. 6.

848 *Mr AZ*, p. 6.

849 Winter, Dr. S., "Redressing historical abuse in New Zealand: A comparative critique," p. 5.

850 *Transcript of evidence of Sonja Cooper and Amanda Hill from State Redress Hearing Phase I*, 29 September 2020, p. 375.

851 *Transcript of evidence of Garth Young from State Redress Hearing Phase II*, 21 October 2020, pp. 293-296.

852 *Transcript of evidence of Sonja Cooper and Amanda Hill*, 29 September 2020, p. 375.

853 *Witness Statement of Linda Hrstich-Meyer for Ministry of Social Development,* WITN0102002 (Royal Commission of Inquiry into Abuse in Care*,* 13 March 2020), p. 19.

854 Ibid.

855 Ministry of Social Development, *Review of Historical Claims Resolution Processes: Report on the Consultation Process with Māori Claimants, July 2018* (Ministry of Social Development, 2018), p. 9.

856 *Privacy Act 2020*, No. 31, 53(b), www.legislation.govt.nz/act/public/2020/0031/latest/whole.html#LMS23223.

857 *Witness Statement of Tanya Sammons and Georgina Sammons*, 24 February 2020, p. 19.

858 *Witness Statement of Judge Carolyn Henwood* (Royal Commission of Inquiry into Abuse in Care, 28 October 2019), p. 7.

859 *Transcript of evidence of Philip Knipe for Ministry of Health from State Redress Hearing Phase II*, p. 29.

860 *Witness Statement of Sonja Cooper and Amanda Hill for Cooper Legal* (Royal Commission of Inquiry into Abuse in Care, 5 September 2019), p. 39.

861 *Witness Statement of Sonja Cooper and Amanda Hill*, 31 January 2020, p. 149.

862 Ibid.

863 *Transcript of evidence of Sonja Cooper and Amanda Hill*, 30 September 2020, p. 407.

864 Ibid., p. 410.

865 *Witness Statement of Frankie Vegas,* p. 9.

866 *Transcript of evidence of Steven Groom from State Redress Hearing Phase II*, p. 676.

867 Ibid.

868 *Witness Statement of Kevin England*, 28 January 2021, p. 33.

869 *Witness Statement of Earl White,* 15 July 2020, p. 10.

870 *Transcript of evidence of Garth Young from State Redress Hearing Phase II*, 22 October 2020, p. 443.

871 *Witness Statement of Earl White*, 15 July 2020, p. 10.

872 *Transcript of evidence of Maureen Taru from Abuse in Children's Residential Hearing,* TRN0000017 (Royal Commission of Inquiry into Abuse in Care, 5 May 2021), p. 181.

873 CLAN NZ, "Submission to the Social Services Committee on The Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill", p. 3, appended to *Witness Statement of Rosslyn Noonan*, 4 November 2019.

874 *Transcript of evidence of Sonja Cooper and Amanda Hill*, 29 September 2020, p. 392.

875 *Witness Statement of John*, p. 15.

876 *Witness Statement of Janet Lowe*, pp. 34-38.

877 *Witness Statement of Frances Tagaloa*, WITN0020005 (Royal Commission of Inquiry into Abuse in Care, 23 November 2020), p. 5.

878 Ibid.

879 *Witness Statement of Tamzin Ford,* WITN0130001 (Royal Commission of Inquiry into Abuse in Care, 29 September 2020), p. 16.

880 The Timaru Herald, "Salvation Army documents go missing," *The Timaru Herald* (17 October 2006, NZP0007287).

881 Report from Rob Veale, investigator, to Lieutenant Colonel Andy Westrupp, The Salvation Army, *Interim report arising from allegations of sexual misconduct* (24 December 2013, SAL0000854).

882 *Transcript of evidence of Tina Cleary from Faith-based Redress Hearing Phase I*, TRN0000329 (Royal Commission of Inquiry into Abuse in Care, 30 November 2020), p. 77.

883 *Transcript of evidence of Colonel Gerald Walker for The Salvation Army from Faith-based Redress Hearing Phase II*, 16 March 2021, p. 124.

884 *Transcript of evidence of Bishop Peter Carrell for the Anglican Church from Faith-based Redress Hearing Phase II*, TRN0000342 (Royal Commission of Inquiry into Abuse in Care, 19 March 2021), p. 336.

885 *Transcript of evidence of Murray Houston for The Salvation Army from Faith-based Redress Hearing Phase II,* TRN0000339 (Royal Commission of Inquiry into Abuse in Care, 16 March 2020), p. 132.

886 *Transcript of evidence of Bishop Ross Bay for the Anglican Church from Faith-based Redress Hearing Phase II*, 17 March 2021, p. 241.

887 Te Rōpū Tautoko, *Briefing Paper No. 5 for the Royal Commission of Inquiry into Abuse in Care: Preliminary report on Information Gathering Project data*, EXT0001573O (12 February 2021), p. 7.

888 *Transcript of evidence of Ms B from Faith-based Redress Hearing Phase I*, TRN0000337 (Royal Commission of Inquiry into Abuse in Care, 11 December 2020), p. 984.

889 *Witness Statement of Neil Harding*, p. 27.

890 Ibid.

891 *Witness Statement of Gloria White,* p. 17.

892 *Witness Statement of Janet Lowe*, pp. 31-32.

893 Letter from Sean O'Sullivan and Jacki Cole, Phillips Fox, to Sonja Cooper, Cooper Legal, regarding Janet Lowe's claim against The Salvation Army, EXT0000367 (29 May 2001).

894 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II,* 16 March 2021, p. 130.

895 *Witness Statement of Ms AV*, WITN0053001 (Royal Commission of Inquiry into Historic Abuse, 13 September 2020), p. 13.

896 *Transcript of evidence of Frances Tagaloa from Faith Based Redress Hearing Phase I*, TRN0000329 (Royal Commission of Inquiry into Abuse in Care, 30 November 2020), p. 53.

897 *Witness Statement of Mr AW*, WITN0074001 (Royal Commission of Inquiry into Abuse in Care, 9 September 2020), p. 7.

898 *Transcript of evidence of Murray Houston from Faith-based Redress Hearing Phase II*, 16 March 2021, p. 151; *Transcript of evidence of Brother Peter Horide for the Marist Brothers from Faith-based Redress Hearing Phase II*, TRN0000345 (Royal Commission of Inquiry into Abuse in Care, 24 March 2021), p. 597.

899 *Transcript of evidence of Ann-Marie Shelley from Faith-based Redress Hearing Phase I,* TRN0000361 (Royal Commission of Inquiry into Abuse in Care, 2 December 2020), p. 253.

900 Ibid.

901 *Transcript of evidence of John from Faith-based Redress Hearing Phase I,* TRN0000332 (Royal Commission of Inquiry into Abuse in Care, 4 December 2020), p. 405.

902 *Witness Statement of John*, p. 17.

903 *Witness Statement of Ms K*, p. 10.

Notes – Part 3

904 Our recommendations differ slightly from the interim recommendations presented to the Minister of Internal Affairs, the Hon Jan Tinetti, on 1 October 2021. We subsequently edited them for conciseness and clarity, and also combined and reordered some. None of these changes altered the meaning of the recommendations. We have, however, added new recommendations. We decided that survivors should be able to apply to both ACC and the new puretumu torowhānui scheme, but that entitlements from one should be taken into account by the other. We also decided that legislation and policy on abuse in care should expressly refer to the

requirement to give effect to te Tiriti o Waitangi; that the principles for the puretumu torowhānui system should include a principle on valuing diversity and challenging ableism; and that the Māori Collective and Crown should agree on draft legislation required to give effect to our recommendations. We also added recommendations on the new scheme's governance body, on unmarked graves and urupa, on funding New Zealand-specific research on abuse in care, on principles for responding to abuse in care claims, on the content and destruction of records, and on monitoring.

905 To 'involve' is a standard of community engagement set out in the *IAP2 Public Participation Spectrum* which involves the agency and communities working together to identify the issues and develop solutions. Communities are involved in the decision-making process but the government ultimately decides. See: International Association for Public Participation, *IAP2 Public Participation Spectrum* (2020)

906 Office for Disability Issues, *New Zealand Disability Strategy 2016-2026* (Ministry of Social Development, 2016), www.odi.govt.nz/assets/New-Zealand-Disability-Strategy-files/pdf-nz-disability-strategy-2016.pdf.

907 To promote independence, the legislation establishing the scheme should remove the responsible Minister's power to amend the scheme's Statement of Intent and Statement of Performance Expectations. This was the approach taken for the Criminal Cases Review Commission.

908 The Royal Commission of Inquiry into Abuse in Care received 120 submissions, 100 from individuals (80 of whom were survivors) and 20 from organisations.

909 For examples of overseas schemes giving rights to family members, see: *Residential Institutions Redress Act 2002*, No. 13, (Ireland), s 9, www.irishstatutebook.ie/eli/2002/act/13/enacted/en/html and *The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, ss 24-28, www.legislation.gov.uk/asp/2021/15/contents.

Careful consideration will need to be given to matters such as who qualifies as a member of family/whānau for the purposes of such a claim, what entitlements they should receive (for example, should there be a flat rate payment or should the amount be what the survivor would have received) and how should they be distributed among family members, and how long after the survivor's death should a claim be permitted.

910 Those designing the scheme will need to consider the circumstances in which State and indirect state agencies, and faith-based institutions, should be considered responsible for abuse in their care. This should include whether there are any circumstances in which they should not be considered responsible for the purposes of the new scheme if the scheme finds that the survivor making the claim was abused in their care (and if so, what if any puretumu torowhānui should be available for that survivor from the scheme).

911 World Health Organization Social Change and Mental Health Violence and Injury Prevention, *Report of the consultation on child abuse prevention* (World Health Organisation, 1999), p. 15. The definition is in respect of neglect and negligent treatment: The failure to provide for the development of the child in all spheres: health, education, emotional development, nutrition, shelter, and safe living conditions, in the context of resources reasonably available to the family or caretakers and causes or has a high probability of causing harm to the child's health or physical, mental, spiritual, moral or social development. This includes the failure to properly supervise and protect children from harm as much as is feasible.

912 *Oranga Tamariki Act 1989*, No. 24, s 14AA, www.legislation.govt.nz/act/public/1989/0024/latest/DLM147088.html; *Chief Executive Ministry of Social Development v T* [2008] 28 FRNZ 66 (FC).

913 *Chief Executive of the Ministry of Social Development v Ledger* [2015] NZFC 669 at [15], [53-56]; *M v D-GSW* [1990] 7 FRNZ 62 (HC) at [66].

914 *Human Rights Act 1993*, No. 82, s 63, www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html.

915 Ibid., s 63(2). See also: definition of racial disharmony in s 61 of the Act.

916 In this regard see: *Trevorrow v State of South Australia* [2007] SASC 285, which at pp. 283-285 discusses Australian case law finding that compensation can be awarded for cultural loss. At pp. 285-286 the Court found that as a result of the State's unlawful conduct the indigenous plaintiff had not "developed a cultural identity with his people", and that this was a "material and compensable loss."

917 See standard 6 of Australian Charities and Not-for-profits Commission, *ACNC Governance Standards*, www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards; Department of Social Services, *The National Redress Scheme for Institutional Child Sexual Abuse (the Scheme) Grant Connected Policy* (Australian Government, 2021).

918 Kruk, R., *Final report, Second year review of the National Redress Scheme* (2021), p. 167.

919 Ibid., p. 217.

920 Ibid., p. 70.

921 Ibid., p. 217.

922 *Witness Statement of Dr Fiona Inkpen for Stand Children's Services Tū Māia Whānau,* WITN0089001 (Royal Commission of Inquiry into Abuse in Care), p. 19.

923 Knowmore Legal Services Limited (Australia), www.knowmore.org.au/.

924 An example of an organisation is *Personal Advocacy and Safeguarding Adults Trust*, which provide advocates trained and skilled in working with, and advocating for, disabled people and specialises in safeguarding adults at risk: www.patrust.net.nz/.

925 *The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, s 36(3), www.legislation.gov.uk/asp/2021/15/contents.

926 See, for example: *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*, No. 45, (Australian Commonwealth), s 12(2)(b), classic.austlii.edu.au/au/legis/cth/num_act/nrsficsaa2018583/. See also, discussion of the reasonable likelihood standard: Australian Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (2015), pp. 367-376; contrast with, for example, the balance of probabilities standard to be used by Redress Scotland,

The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, s 36(1)(a), www.legislation.gov.uk/asp/2021/15/contents.

927 For an example of the plausibility approach to causation, see: the *Indian Residential Schools Settlement Agreement, Schedule D: Independent Assessment Process (IAP) for continuing Indian residential school abuse claims* (Canada, 2006), pp. 8, 12, 34-36. Note that in the Independent Assessment Process, the abuse and claimed harm had to be established to the balance of probabilities.

928 *New Zealand Bill of Rights Act 1990*, No. 109, s 27(1), 29, www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html

929 Ibid., s 27; Kaufman, F., *Searching for justice: An independent review of Nova Scotia's response to reports of institutional abuse, Volume 1* (Department of Justice, Nova Scotia, 2002). Alleged perpetrators had the right to comment in the Canadian Independent Assessment Process for the Indian Residential Schools, and in the Irish Residential Institutions redress scheme. They do not, however, have the right to comment in the Australian National Redress Scheme or in the upcoming Redress Scotland scheme.

930 See, for example: *SB v New South Wales* (2004) 13 VR 527 at [594]-[601] and [604].

931 Those designing the scheme may also wish to consider whether any additional harm caused by a survivor's experience of previous State agency or faith redress processes should also be taken into account.

932 The Confidential Listening and Assistance Service and the Confidential Forum for Former In-Patients of Psychiatric Hospitals.

933 Those designing the scheme may wish to consider whether the well-being services available following the approval of a brief claim should be the same as those available following the approval of a standard claim, given that the brief claim process will not consider the impacts of the abuse on the survivor (i.e. what harm they have suffered because of the abuse).

934 Carrion, V.G., Weems, C.F. and Reiss, A.L., "Stress predicts brain changes in children: a pilot longitudinal study on youth stress, posttraumatic stress disorder and the hippocampus," *Pediatrics* 199, vol. 3 (2007), 509-516; Humphries, T., Kushalnagar, P., Mathur, G. et al, "Avoiding linguistic neglect of Deaf children," *Social Service Review 90,* vol. 4 (2016), 598-619; Nemeroff, C.B., "Paradise lost: The neurobiological and clinical consequences of child abuse and neglect," *Neuron* 89, vol. 5 (2016), 892-909; Perego, G., Caputi, M. and Ogliari, A. "Neurobiological correlates of psychosocial deprivation in children: A systematic review of neuroscientific contributions," *Child and Youth Care Forum 45* (2016), 329-352; Shern, D.L., Blanch, A.K. and Steverman, S.M., "Toxic stress, behavioural health and the next major era in public health," *Americal Journal of Orthopsychiatry 86,* vol. 2 (2016), 109-123; Tottenham, N. and Galván, A., "Adolescent brain development," in *Developmental psychopathy: Developmental neuroscience*, ed. Cicchetti, D. (John Wiley & Sons, 2016); Twardosz, S. and Lutzker, J.R., "Child maltreatment and the developing brain: A review of neuroscience perspectives," *Aggression and Violent Behaviour 15*, vol. 1 (2010), 59-68; van IJzendoorn, M.H., Palacios, J., Sonuga-Barke, E.J. et al., "Children in institutional care: Delayed development and resilience," *Monographs of the Society for Research in Child Development* 76, vol. 4 (2011) 8-30.

935 Confidential Listening and Assistance Service, 2015; Carr, A., Duff, H. and Craddock, F., "A systematic review of the outcome of child abuse in long-term care," *Trauma, Violence & Abuse* 21, no. 4 (2020), 660-677.

936 Compensation Advisory Committee, *Towards redress and recovery: report to the Minister for Education and Science* (2002).

937 Consistent with this, United Nations, *Convention on the Rights of the Child* (A/Res/44/25, 20 November 1989), art 20(1) provides: "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." See also: *SB v New South Wales* (2004) 13 VR 527 at [579] and [595], in which damages were awarded for the aggravation of a pre-existing condition by the defendant's breach of duty.

938 *Witness Statement of Linda Hrstich-Meyer for Ministry of Social Development,* WITN0102001 (Royal Commission of Inquiry into Abuse in Care, 27 January 2020), pp. 11-12.

939 *Witness Statement of Philip Knipe for Ministry of Health*, WITN0100001 (Royal Commission of Inquiry into Abuse in Care, 27 January 2020), pp. 18, 23.

940 *Witness Statement of Helen Hurst for Ministry of Education,* WITN0099001 (Royal Commission of Inquiry into Abuse in Care, 27 January 2020), p. 18; *Transcript of Evidence of Helen Hurst for Ministry of Education from State Redress Hearing Phase II,* TRN0000024 (Royal Commission of Inquiry into Abuse in Care, 28 October 2020), pp. 721, 753-756.

941 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*, No. 45 (Australia), s 16(1)(a), classic.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/num_act/nrsficsaa2018583/index.html#s16; Knowmore Legal Services (Australia), "What is the National Redress Scheme," knowmore.org.au/for-survivors/redress-scheme/.

942 Independent Assessment Process Oversight Committee 2021, *Independent Assessment Process – Final Report* (2021), p. 95, www.iap-pei.ca/media/information/publication/pdf/FinalReport/IAP-FR-2021-03-11-eng.pdf.

943 We heard that one of the objectives of the Independent Assessment Process was to provide compensation at a level comparable to the courts, and that the amounts payable were determined with regard to Canadian case law at the time the Settlement Agreement was negotiated. However, we understand there was debate about whether the Independent Assessment Process achieved this because some considered the amounts available under the scheme to be much lower than what could be obtained in court. One of the issues that contributed to this was that payment ranges were fixed in 2006 and not changed in line with inflation or developing case law over the next 15 years (until the scheme closed on 31 March 2021).

944 Northern Ireland Assembly, *Research paper: Comparative analysis of the Historical Institutional Abuse Redress Board* (2021), p. 3; Memorandum to Scottish Parliament, "Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill – Financial Memorandum," p. 8.

945 *Witness Statement of Linda Hrstich-Meyer,* 27 January 2020, pp. 11-12.

946 Ibid.; Historic Claims Business Process and Guidance (Ministry of Social Development, 2019).

947 *Transcript of evidence of Helen Hurst from State Redress Hearing Phase II,* p. 721.

948 *Witness Statement of Philip Knipe*, 27 January 2020, p. 18.

949 For the Catholic Church, see: Te Rōpū Tautoko, Tautoko briefing paper no. 2 for Royal Commission into Abuse in Care: Summary of funding and costs associated with redress (2021), p. 10;

Te Rōpū Tautoko, Tautoko briefing paper no. 5 for Royal Commission into Abuse in Care: Preliminary report on Information Gathering Project data (2021), p. 35. For the Anglican Church, payment figures are based off the Church's estimates and figures we received between May to September 2020 from each entity within the Anglican Church.

950 *Selection of data providing information on settlements in The Salvation Army redress process,* MSC0002219, p. 3.

951 Independent Assessment Process Oversight Committee 2021, *Independent Assessment Process – Final Report*, pp. 22, 84, www.iap-pei.ca/media/information/publication/pdf/FinalReport/IAP-FR-2021-03-11-eng.pdf.

952 Kaufman, F., *Searching for justice: An independent review of Nova Scotia's response to reports of institutional abuse, Volume 1*, pp. 300-308, 322.

953 *Residential Institutions Redress Act 2002*, No. 13, (Ireland), s 13(6), www.irishstatutebook.ie/eli/2002/act/13/enacted/en/html; *The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, ss 46-48, www.legislation.gov.uk/asp/2021/15/contents; *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*, No. 45 (Australian Commonwealth), s 43, classic.austlii.edu.au/au/legis/cth/num_act/nrsficsaa2018583/.

954 The Court would also need to take into account any ACC payments or other entitlements received by a survivor.

955 United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (A/Res/39/46, 10 December 1984), art 14(1): "fair and adequate compensation, including the means for as full rehabilitation as possible"; Committee against Torture, *Concluding observations on the second periodic report of Ireland* (CAT/C/IRL/CO/2, 17 June 2011), p. 9 (considering the waiver requirement under an Irish redress scheme for survivors of the Magdalen Laundries).

956 The Crown will need to consider whether s 321(4) of the *Accident Compensation Act 2001* applies to payments from the new scheme. If it does, the Crown should ensure that the Accident Compensation Corporation does not exercise its discretion under s 321(4)(b) to recover entitlements it previously provided to survivors if they receive a new payment from the scheme. The reasons for that include that any payment ACC previously provided will have been taken into account by the scheme in deciding on the redress payment to the survivor.

957 *Witness Statement of Linda Hrstich-Meyer for Ministry of Social Development,* WITN0102003 (Royal Commission of Inquiry into Abuse in Care, 31 July 2020), p. 6.

958 *Indian Residential Schools Settlement Agreement* (Canada, 2006).

959 Independent Assessment Process Oversight Committee 2021, *Independent Assessment Process – Final Report*, p. 57, www.iap-pei.ca/media/information/publication/pdf/FinalReport/IAP-FR-2021-03-11-eng.pdf: 4,348 claims resolved in 2010 (3,210 by adjudicator decision), 4,426 in 2011 (3,377 by adjudicator decision), 5,435 in 2012 (3,935 by adjudicator decision), 6,251 in 2013 (3,938 by adjudicator decision) and 5,092 in 2014 (3,739 by adjudicator decision). In 2015, it resolved 3,642 claims (2,646 by adjudicator decision). Note also that p. 47 of the Report refers to a negotiated settlement process and p. 57 sets out settlement statistics. Settlements were also provided for in the *Residential Institutions Redress Act 2002*, No. 13, (Ireland), s 12, www.irishstatutebook.ie/eli/2002/act/13/enacted/en/html. Those designing the new scheme for New Zealand may wish to consider whether to provide for negotiated

settlements.

960 See: *Indian Residential Schools Settlement Agreement, Schedule D: Independent Assessment Process (IAP) for continuing Indian residential school abuse claims*, p. 14; *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*, No. 45, (Australian Commonwealth), ss 73-79 (note, however, ss 156-157), classic.austlii.edu.au/au/legis/cth/num_act/nrsficsaa2018583/; *The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, ss 54-59 (note, however, ss74-78), www.legislation.gov.uk/asp/2021/15/contents.

961 We recommended above that once the scheme has approved a claim it should put the survivor in contact with a navigator. The navigator will then work with the survivor on what they need, including wellbeing services, to restore their mana. Those designing the scheme will need to consider what review rights should apply to decisions on well-being and other services.

962 In Canada, a dispute about records held by the Independent Assessment Process in the Indian Residential Schools Settlement Agreement went to the Supreme Court: *Canada (Attorney General) v Fontaine* 2017 SCC 47, [2017] 2 SCR 205. We heard that the case put confidentiality undertakings the Independent Assessment Process had given to survivors in doubt, and created uncertainty about what the scheme could say to survivors accessing it after the litigation had begun in relation to what would happen to their records. These issues emphasise the need to have very clear rules about records at the outset and not to change those rules unless absolutely necessary.

963 *J (and Other Plaintiffs in the DSW Litigation Group) v Attorney-General* [2018] NZHC 1331; *Attorney-General v J (and Other Plaintiffs in the DSW Litigation Group)* [2019] NZCA 449, [2020] 2 NZLR 176.

964 We understand anonymous referrals are made when the survivor does not consent to their identity being disclosed, and that the Australian National Redress Scheme will not make a referral that identifies a survivor without the individual's consent. In contrast, we understand Redress Scotland will advise survivors it will give police the name of anyone they allege abused them, along with their own name.

965 Kruk, R., *Final Report, Second year review of the National Redress Scheme*, p. 217

966 Problems have arisen in Australia in this regard, see: Ibid., pp. 160-169.

967 *The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021*, s 17, www.legislation.gov.uk/asp/2021/15/contents.

968 *Residential Institutions Statutory Fund Act 2012*, No. 35 (Ireland), s 42, www.legislation.ie/eli/2012/act/35/enacted/en/print.

969 *Witness Statement of Dr Fiona Inkpen*, p. 22.

970 *Harvey, H., "New Zealand's psychological crisis putting lives at risk," Stuff (26 January 2021),* www.stuff.co.nz/national/health/122695066/new-zealands-psychological-crisis-putting-lives-at-risk.

971 *Government Inquiry into Mental Health and Addiction, He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction, p. 16.*

972 Ibid., p. 11.

973 In Australia, where the Catholic Church is made up of a range of independent bodies, Australian Catholic Redress Ltd was registered as a company to oversee Catholic dioceses' engagement with the Australian National Redress Scheme (see: www.catholic.org.au/redress). The company provides a single access point for interaction between the scheme and dioceses, and the approximately 5,000 Catholic sites for which they are (or have been) responsible. The company also helps ensure all diocesan obligations under the scheme are met. It does not, however, include the Catholic Orders, many of which are small. This can complicate findings about who is responsible for payments (for example, where there is a school that was owned by a particular diocese but run by a specific Order).

974 See recommendation 3 and part 1.4 above. See also: New Zealand's obligations under, for example, article 2(3)(a) of the *International Covenant on Civil and Political Rights*. See, too, article 14(1) of the *United Nations Convention Against Torture, and other Cruel, Inhumane or Degrading Treatment or Punishment*. The United Nations Committee against Torture has criticised New Zealand's reservation to article 14(1), and for not having an enforceable right to fair and adequate compensation in its legal system for victims of torture, see: Committee against Torture, *Concluding observations on the sixth periodic report of New Zealand* (CAT/C/NZL/CO/6, 2 June 2015), p. 8.

975 See in this regard New Zealand's obligations under articles 2(2) and 2(3)(b) of the *International Covenant on Civil and Political Rights.* We note survivors can seek compensation for breach of the *New Zealand Bill of Rights Act 1990.* However, the NZBORA does not cover private bodies including faith-based institutions and there are important differences between tort compensation and Bill of Rights compensation. Bill of Rights compensation also does not include any harm covered by accident compensation legislation: see the inquiry's *Briefing Paper - Redress in International and Domestic Human Rights Law* (Royal Commission of Inquiry into Abuse in Care, 2020), pp. 16-17. As referred to below, there may be a path for some survivors to seek compensation under the *Human Rights Act 1993* for sexual harassment claims in limited settings.

976 Some survivors in Australia are obtaining significant compensation including through the courts. By way of example only, and accepting it is not the standard award, in Western Australia a survivor of abuse while in the care of a faith-based institution has reportedly been awarded compensation of about $A1.3 million. See: Menagh., J, "Christian Brothers forces to increase payout to John Lawrence, who survived 'degrading, humiliating' sexual abuse," *ABC News* (6 May 2021), www.abc.net.au/news/2021-05-06/christian-brothers-forced-to-increase-payout-to-abuse-survivor/100121008. Substantial out-of-court settlements for abuse in care have also been reported. See, for example: Cooper, A., "Legal payout brings hope for other victims of paedophile priest," *The Age* (26 July 2021), www.theage.com.au/national/victoria/legal-payout-brings-hope-for-other-victims-of-paedophile-priest-20210722-p58c6z.html; Wilson, A., "State's $1.2M Abuse Payout" *Mercury (Hobart)* (2 August 2021), www.pressreader.com/australia/mercury-hobart/20210802/281509344228644.

977 Note that the abuse covered by the right should be the same abuse that the new scheme will cover.

978 *Crown Proceedings Act 1950*, No. 54, ss 3(2)(b), 6(1)(a),legislation.govt.nz/act/

public/1950/0054/latest/whole.html; *Attorney-General v Strathboss Kiwifruit Limited* [2020] NZCA 98, [2020] 3 NZLR 247 at [70]-[109].

979 See for example: *Couch v Attorney-General (No 2)* [2010] NZSC 27, [2010] 3 NZLR 149 at [158] per Tipping J, *Wishart v Murray* [2015] NZHC 3363, [2016] 2 NZLR 565 at [66]-[69], and *P v Attorney-General* HC Wellington CIV-2006-485-874, 16 June 2010 at [83]-[90]. It may be possible to claim exemplary damages on a vicarious basis against the Crown in circumstances where an official of the State has deliberately, recklessly or in a grossly negligent manner "directly inflicted personal injury on the plaintiff", particularly if "that official has not been able to be identified and so the wrongdoer has not been punished or disciplined" (*S v Attorney-General* [2003] 2 NZLR 450 (CA) at [93]). It is unclear however the extent to which this would apply to abuse in care cases, or if it would apply to defendants other than the Crown. Note also *Daniels v Thompson* [1998] 3 NZLR 22 (CA) and the discussion about this case in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, Wellington, 2019) at 1341.

980 For example, see: *New Zealand Bill of Rights Act 1990,* No. 109, s 3, www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html; *Human Rights Act 1993*, No. 82, s 62(3), www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html.

981 See: *Accident Compensation Act 2001,* No. 49, s 317(4)(b), www.legislation.govt.nz/act/public/2001/0049/latest/DLM99494.html. This subsection refers to s 92B of the *Human Rights Act 1993* (HRA), which includes sexual harassment claims under s 62 of the HRA. If a case brought under s 92B is successful, remedies may be granted under s 92I HRA including compensation. We consider s 317(4)(b) of the *Accident Compensation Act 2001* may be interpreted as providing an exception to the ACC bar for compensation claims for some sexual abuse (namely, that covered by s 62 of the HRA). We note that the Human Rights Review Tribunal referred to the ACC bar in *Thompson v van Wijk* [2021] NZHRRT 39 at [108.2], but did not appear to consider the effect of s 317(4)(b).

982 *Oceana Gold (New Zealand) Ltd v WorkSafe New Zealand* [2019] NZHC 365. We understand the exception was enacted specifically to overcome shortcomings in accident compensation laws in terms of providing proper compensation to victims of crime, see: *Victims of Crime Reform Bill 2011* (319-1), explanatory note, p. 14,www.nzlii.org/nz/legis/bill/vocrb2011250/. This is the same reason we recommend an exception be provided for abuse in care cases.

983 See: *Human Rights Act 1993,* No. 82, s 92I, www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html. Amended as necessary to ensure appropriate compensation can be awarded in abuse in care cases. There should be no need to go to the Human Rights Commission first, as is the case with other complaints brought under the *Human Rights Act 1993*. However, there could be a requirement that claimants have to make a claim to the redress scheme before taking proceedings in the Human Rights Review Tribunal, see: www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html.

984 For examples of this, see: *Privacy Act 2020*, No. 31, s 98, www.legislation.govt.nz/act/public/2020/0031/latest/LMS23223.html; *Health and Disability Commissioner Act 1994*, No. 88, s 51, www.legislation.govt.nz/act/public/1994/0088/latest/DLM333584.html.

985 Some readers may find it useful to have more detailed reasons for our recommendations on the right to be free from abuse in care and on limitation reform. We will consider publishing working papers in 2022 on these matters.

986 ACC and WorkSafe, *Harm Reduction Action Plan* (New Zealand Government, 2019). Due to be reviewed in 2022.

987 ACC and WorkSafe, *2020/21 Statement of Performance Expectations* (New Zealand Government), pp. 9, 19.

988 *Limitation Act 2010*, No. 110, s 17, www.legislation.govt.nz/act/public/2010/0110/latest/DLM2033120.html.

989 *Age of Majority Act 1970*, No. 137, s 4(2), www.legislation.govt.nz/act/public/1970/0137/latest/DLM396479.html#DLM396495.

990 For example, all Australian states have removed any limitation period for child sexual abuse. With the exception of Queensland, the Australian Capital Territory and Western Australia, all states have extended this beyond sexual abuse to include physical and psychological/connected abuse. See: *Prescription and Limitation (Scotland) Act 1973,* ss 17A-17D, www.legislation.gov.uk/ukpga/1973/52/contents.

991 Our reasons for this are essentially the same as the reasons given by the Australian Royal Commission into Institutional Responses to Child Sexual Abuse for the retrospective limitation reform it recommended, see: Australian Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (2015), pp. 434-444, 457-458.

992 Any amount previously paid in settlement should be taken into account by the court.

993 For examples of cases where a court has found that a fair trial was not possible in relation to all of part of a claim, see *B v Sailor's Society* [2021] CSOH 62 and *JXJ v De La Salle Brothers* EWHC 1914 (QB).

994 Regarding the need for the legislation to be retrospective, see: Australian Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (2015), p. 458; the *Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016* (Explanatory notes) (Queensland) and Family and Community Development Committee, *Civil Justice Reforms – Betrayal of Trust Report* (State of Victoria Inquiry into the Handling of Child abuse by Religious and Other Non-Government Organisations 2013), p. 540.

995 The Crown could also consider, in addition to the discretion not to allow a case to proceed if a fair trial is not possible, whether there should be a similar discretion when a defendant shows "substantial prejudice", as in section 17D of the *Prescription and Limitation (Scotland) Act 1973*, www.legislation.gov.uk/ukpga/1973/52/contents. Consideration should also be given to the differing grounds on which previously settled or adjudicated cases can be relitigated in section 17C of the *Prescription and Limitation (Scotland) Act 1973*, the *Civil Liability Amendment (Child Abuse) Bill 2021* (New South Wales), www.parliament.nsw.gov.au/bill/files/3842/First%20Print.pdf and the Limitation of Actions Act 1974 (Queensland), s 48, www.legislation.qld.gov.au/view/pdf/inforce/current/act-1974-075.

996 Relevant to this will be whether this reform is required for vulnerable adults given the *Limitation Act 1950*, No. 65, s 24, www.legislation.govt.nz/act/public/1950/0065/latest/DLM262437.html#DLM262610; *Limitation Act 2010,* No. 110, s 45, www.legislation.govt.nz/act/public/2010/0110/latest/DLM2033120.html.

997 *Mental Health Act 1911* (as amended by section 6 of the Mental Health Amendment Act

1935), and the *Mental Health Act 1969*, No. 16, s 124, www.nzlii.org/nz/legis/hist_act/mha19691969n16155/; s 124 of the *Mental Health Act 1969* included the Crown in this immunity.

998 There are other immunity provisions, see for example: *Public Service Act 2020,* No. 40, s 104, www.legislation.govt.nz/act/public/2020/0040/latest/LMS106159.html. The Law Commission may also wish to consider the extent to which these are barriers to survivors taking abuse in care claims which should be reformed.

999 Any time during which the survivor was detained in a mental health institution, did not know of the events giving rise to their claim, or was outside of New Zealand, is not included in that six-month period.

1000 See, for example: *Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22 (not an abuse in care case).

1001 See, for example: *Trevorrow v State of South Australia* [2007] SASC 285 at [1167] to [1169]. The Court refers to a submission from the State that many of the plaintiff's incapacities and disabilities were not caused by any wrongful act on its part. The Court stated: "In such a circumstance the State has an evidentiary responsibility to disentangle the causes of the plaintiff's disability and incapacity and to exclude the State's conduct as a contributory cause." See also: *SB v New South Wales* (2004) 13 VR 527 at [544].

1002 *Attorney-General's Values for Crown Civil Litigation* (2013), www.crownlaw.govt.nz/assets/Uploads/Media-Statements/Attorney-Generals-Values-for-Crown-Civil-Litigation-2013.pdf.

1003 The review reported concerns by interviewees that the Crown was "driven too much by the wish to win" and of a "proceed at all costs and win at all costs" culture, see: Dean QC, M. and Cochrane, D., *A review of the role and functions of the Solicitor-General and the Crown Law Office* (2012), pp. 15-16, www.crownlaw.govt.nz/assets/Uploads/Reports/review-2012.pdf.

1004 *Transcript of evidence of Una Jagose for Crown Law Office from State Redress Hearing Phase II,* TRN0000025 (Royal Commission of Inquiry into Abuse in Care, 3 November 2020), p. 1044.

1005 *Legal Services Directions 2017, Appendix B - The Commonwealth's obligation to act as a model litigant,* (2017), www.legislation.gov.au/Details/F2017L00369.

1006 New South Wales Government, Department of Premier and Cabinet, *Model Litigant Policy for Civil Litigation* (2016), arp.nsw.gov.au/assets/ars/39c2cd625f/Model-Litigant-Policy-for-Civil-Litigation.pdf.

1007 *Legal Services Directions 2017, Appendix B - The Commonwealth's obligation to act as a model litigant* (2017), at [1], www.legislation.gov.au/Details/F2017L00369.

1008 Ibid., [2(b)]

1009 Ibid., [2(d)]

1010 Ibid., [2(e)(i)], [(ii)], [(iii)].

1011 Ibid., [2(f)].

1012 Ibid., [2(g)].

1013 Ibid., [2(i)].

1014 Ibid., [5.2(a)(i)].

1015 New South Wales Government, Department of Premier and Cabinet, *Model Litigant Policy for Civil Litigation*, at [3.2(l)].

1016 *Legal Services Directions 2017, Appendix B - The Commonwealth's obligation to act as a model litigant,* Note 4, www.legislation.gov.au/Details/F2017L00369; New South Wales Government, Department of Premier and Cabinet, *Model Litigant Policy for Civil Litigation* (2016), at [3.3], [3.4].

1017 New South Wales Government, Department of Premier and Cabinet, *Model Litigant Policy for Civil Litigation* (2016), at [1.3].

1018 Ibid., at [1.4].

1019 Principle 18, see: New South Wales Government, *Guiding Principles for Government Agencies Responding to Civil Claims for Child Abuse* (2016), arp.nsw.gov.au/assets/ars/2b41c52636/NSW-Government-Guiding-Principles-for-Government-Agencies-Responding-to-Civil-Claims-for-Child-Abuse.pdf.

1020 Ibid.

1021 Find and Connect Web Resource Project for the Commonwealth of Australia, www.findandconnect.gov.au.

1022 United Nations, *Convention on the Rights of Persons with Disabilities* (A/Res/61/106, 24 January 2007)., art 1.

1023 Stace, H. and Sullivan, M., *A brief history of disabililty in Aotearoa New Zealand* (Office for Disability Issues, 2020), www.odi.govt.nz/guidance-and-resources/a-brief-history-of-disability-in-aotearoa-new-zealand/.

1024 Bevan-Brown, J., "Intellectual disability: A Māori perspective" and Ratima, K. and Ratima, M., "Māori experience of disability and disability support services" as cited in King, P.T., *Māori with lived experience of disability – part 1: Commissioned by the Waitangi Tribunal for Stage Two of the Wai 2575 Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019), p. 4.

1025 Kaiwai, H. and Allport, T., *Māori with disabilities (part two): Report commissioned by the Waitangi Tribunal for the Health Services and Outcomes Inquiry* (Wai 2575, 2019), p. 18.

1026 Hickey, H. and Wilson, D., "Whānau hauā: Reframing disability from an Indigenous perspective," *MAI Journal: New Zealand Journal of Indigenous Scholarship 6*, vol. 1 (2017) 82-94.

1027 See: Kaiwai, H. and Allport, T., *Māori with disabilities (part two): Report commissioned by the Waitangi Tribunal for the Health Services and Outcomes Inquiry*.

1028 Office for Disability Issues, *New Zealand Disability Strategy 2016-2026* (2016), p. 13, www.odi.govt.nz/assets/New-Zealand-Disability-Strategy-files/pdf-nz-disability-strategy-2016.pdf.

1029 Ferrigon, P. and Tucker, K., "Person-first language vs. identity-first language: An examination of the gains and drawbacks of Disability Language in society," *Journal of Teaching Disability Studies* (2019).

1030 Ms CO, RC-02636-R0S6 (Royal Commission of Inquiry into Abuse in Care, 28 June 2021), p. 14.

HE WAIATA AROHA MŌ NGĀ PURAPURA ORA

Kāore te aroha i ahau mō koutou e te iwi

I mahue kau noa i te tika

I whakarerea e te ture i raurangi rā

Tāmia rawatia ana te whakamanioro

he huna whakamamae nō te tūkino

he auhi nō te puku i pēhia kia ngū

Ko te kaikinikini i te tau o taku ate tē rite ai ki te kōharihari o tōu

Arā pea koe rā kei te kopa i Mirumiru-te-pō

Pō tiwhatiwha pōuri kenekene

Tē ai he huringa ake i ō mahara

Nei tāku, 'kei tōia atu te tatau ka tomokia ai'

Tēnā kē ia kia huri ake tāua ki te kimi oranga

E mate Pūmahara? Kāhorehore! Kāhorehore!

E ara e hoa mā, māngai nuitia te kupu pono i te puku o Kareāroto

Kia iri ki runga rawa ki te rangi tīhore he rangi waruhia ka awatea

E puta ai te ihu i te ao pakarea ki te ao pakakina

Hei ara mōu kei taku pōkai kōtuku ki te oranga

E hua ai te pito mata i roto rā kei aku purapura ora

Tiritiria ki toi whenua, onokia ka morimoria ai

Ka pihi ki One-haumako, ki One-whakatupu

Kei reira e hika mā te manako kia ea i te utu

Kia whakaahuritia tō mana tangata tō mana tuku iho nā ō rau kahika

Koia ka whanake koia ka manahua koia ka ngawhā

He houkura mārie mōwai rokiroki āio nā koutou ko Rongo

Koia ka puta ki te whaiao ki te ao mārama

Whitiwhiti ora e!

Paraone Gloyne

Abuse in Care
Royal Commission of Inquiry