

February 2023

Crown Response to the Abuse in Care Inquiry

Briefing to the Incoming
Minister for the Public Service



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

Introducing the Crown Response to the Abuse in Care Inquiry

The Crown Response to the Abuse in Care Inquiry (the Crown Response) was established in late 2018 to help make sure the Crown responds to and engages with the Abuse in Care Royal Commission of Inquiry (the Royal Commission) in an effective and timely way. As the Minister for the Public Service, Cabinet has mandated you to lead this cross-agency programme of work.

The Crown Response is led and coordinated by the Crown Response Unit (the CRU). Appendix A gives an overview of the Crown Response's structure. The response to the Royal Commission touches on multiple portfolios, as highlighted in Appendix B.

The Abuse in Care Royal Commission of Inquiry's current status

The Royal Commission has concluded its public hearings and the majority of its evidence gathering phase and is preparing its final report. This is due to the Governor-General in June 2023. It is expected to have a focus on the prevention of further abuse in care.

Ahead of its final report, the Royal Commission will be producing an interim report on historic abuse at the Marylands School for Boys with Learning Disabilities, run by the Roman Catholic order the Brothers Hospitallers of St John of God from 1955 to 1984. The interim report is expected to be delivered in March 2023. The Royal Commission may also issue a number of other topical and research papers.

Appendix C lists the investigation and research reports produced by the Royal Commission to date. So far, the report with the most significant and wide-ranging recommendations for the Crown is the redress report, *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui*, delivered in December 2021.

The work of the Crown Response to the Abuse in Care Inquiry

Mirroring the shift in the Royal Commission's phase of work, the primary focus of the Crown Response has moved from providing information and witnesses to support the proceedings of the Royal Commission to driving and coordinating responses to Royal Commission recommendations.

This work is focused on the development of a new redress system and associated projects for survivors of abuse in care. This focus is likely to expand into the coordination and monitoring of government-wide responses once the Royal Commission's final report is delivered.

To date, Cabinet has agreed:

- a. on the demonstrated need for a new independent redress system that is compassionate, equitable and meets survivors' needs;
- b. on the overall design arrangements to develop the new system, with high-level design proposals to be prepared by survivor-focused Design and Advisory Groups and further work on key aspects of redress by the Crown Response;

c. 9(2)(f)(iv)-confidentiality of advice

[REDACTED]

The CRU is leading the work outlined above.

In addition, joint Ministers have approved a rapid payment option for existing historic abuse claims agencies. The Ministry of Social Development and the Ministry of Education, as the agencies with claim queues, have subsequently received approval from their respective Ministers for specific approaches appropriate to their context. The Ministry of Health and Oranga Tamariki are monitoring the approach and will implement it if claim queues emerge for them.

Work is also being led by the Ministry of Justice, with the Ministry of Business, Innovation and Employment and Crown Law, advising Ministers on the Royal Commission's recommendations relating to ACC and civil litigation settings, including the Limitation Act 1950 and the Limitation Act 2010. The Minister of Justice is the primary reporting Minister for this work.

Te Kawa Mataaho is leading work on exploring possible tools that could ensure the Public Service is best configured to respond to the issues being identified by the Royal Commission.

The table below sets out key Ministerial and Cabinet decisions needed to advance this work over the next six months. Appendix D sets out key work programme milestones through to the end of this calendar year.

Decisions for the Crown Response over the next six months

WORK AREA	MINISTERIAL DECISION
ONE MONTH	
Interim listening service for survivors	<ul style="list-style-type: none"> 9(2)(f)(iv)-confidentiality of advice
Development of the new redress system	<ul style="list-style-type: none"> Select candidate for appointment as Chair of the Design Group tasked to develop high-level proposals for the new redress system. Select the candidates for appointment as members of the Design and Advisory Groups, following receipt of recommended candidate shortlist from the independent candidate review panel. Approve the draft terms of reference for the Design and Advisory Groups, to then be endorsed by the Cabinet Social Wellbeing Committee.
TWO TO THREE MONTHS	
Public apology for abuse in care	<ul style="list-style-type: none"> Confirm the timing and high-level delivery approach for the public apology for survivors of abuse in care. Confirm a draft outline for the public apology and a plan for engagement on potential content with survivors. Confirm supporting 'reconciliation' projects, such as memorials, scholarships, research and telling survivor stories. 9(2)(f)(iv)-confidentiality of advice
Budget 2023 and work programme	<ul style="list-style-type: none"> Confirm any changes to the Crown Response 2023/24 work programme to accommodate Budget 2023 scaling decisions.
Interim listening service for survivors	<ul style="list-style-type: none"> 9(2)(f)(iv)-confidentiality of advice
FOUR TO SIX MONTHS	
Public apology for abuse in care	<ul style="list-style-type: none"> Approve the final text for the public apology, either with an agreed group of key Ministers or with Cabinet if preferred.
Records improvements	<ul style="list-style-type: none"> 9(2)(f)(iv)-confidentiality of advice
Development of the new redress system	<ul style="list-style-type: none"> Agree the recommendations to take to Cabinet following receipt of the high-level design proposals from the Design Group and a Crown Response report back on two scope parameters for the new system. The two parameters are: i) definitions of abuse, neglect, and care settings; and, ii) the potential inclusion of whānau in those able to access the new system.
Royal Commission's final report	<ul style="list-style-type: none"> Approve the Crown's high-level approach for considering the full suite of findings and recommendations to be set out in the Royal Commission's final report.

Contextual and strategic issues

There are several contextual factors that are important to the way in which the Crown responds to the Royal Commission's recommendations:

- a. the breadth of potential portfolio interests and intersections – Appendix B summarises those interests as they apply to the development of the new redress system, but which will also likely apply to the Royal Commission's final report;
- b. the potential for cross-party conversations on the response to the Royal Commission;
- c. continuing to work through and fulfil Treaty of Waitangi obligations in the design, establishment, governance, and operation of the new redress system;
- d. continuing to effectively develop and manage relationships with the wide range of stakeholders, particularly survivor communities, iwi, urban Māori authorities and other Māori voices, and major survivor advocacy groups; and
- e. deepening engagement with non-State care organisations to secure their input into the redress design process and work through commitments to help develop, fund, and support the new redress system; and
- f. the ongoing importance of measures, e.g., operational and cultural changes, to prevent abuse in care.

There are three key strategic issues for consideration in the short-term, the:

- a. pace at which you want to drive the development of the new redress system;
- b. potential scale of the new redress system and Ministers' approach to managing associated potential fiscal issues; and
- c. overall approach for considering and responding to the Royal Commission's final report and its full set of findings and recommendations.

The issues are briefly outlined below. The CRU would be pleased to meet with you to discuss these issues in greater depth and provide appropriate follow-up briefings.

Pace for the development of a new redress system

Given Cabinet's likely focus on initiatives' reprioritisation in 2023, there are options for the pace at which the development of the new redress system proceeds. Currently, in line with the approach agreed by Cabinet in November 2022, the CRU is working to have high-level design proposals for the new system considered by Cabinet in August 2023. Following Cabinet decisions, the CRU would then move into detailed design and implementation planning, with a view that implementation of a new redress system would commence around mid-2024.

Decisions on high-level design proposals could, alternatively, be deferred for consideration by the next administration. This would create more time for the development and consideration of high-level design proposals and allow some of the Crown Response's forecast costs to be shifted into the next financial year. However, survivor communities are strongly vested in this work continuing to progress at pace, with many older survivors concerned that they may not receive redress. Delays to the design process could also cause distress for some survivors and attract significant negative comment from both survivors and advocates.

Alternatively, design decisions could be staggered in different ways, with some accelerated for Cabinet to consider earlier in 2023 and some deferred for consideration by the next administration.

Potential scale of a new redress system

The Royal Commission has highlighted significant historic abuse across multiple care settings, with ongoing major social and economic costs, and the need for diverse supports to address survivors' longstanding trauma. The new redress system therefore has the potential to be expensive, as highlighted in the November 2022 Cabinet paper on the overall design arrangements. There are a number of ways to manage the fiscal risks around the new system, while still designing and implementing a meaningful redress system.

9(2)(f)(ii)-under active consideration

The Royal Commission's final report

Given the breadth of the Royal Commission's investigations and its lines of questioning in hearings, the final report is likely to cover a wide range of findings and recommendations on care system accountability and monitoring, safeguarding practices, and the rights of children and vulnerable adults. There are also likely to be a small number of further redress recommendations.

There will be significant expectations among survivors and their advocates that Government will respond promptly and positively to the final report. The CRU is engaging with the Royal Commission to try to get an indication of the report's high-level content as early as possible. This will allow a more detailed response approach to be developed and agreed in advance of receipt of the report.

Crown Response reporting and contacts

We propose to provide monthly status reports on the Crown Response to keep you updated on general developments across the full programme. Briefings and aide memoires will be provided on specific items. Given the cross-portfolio nature of the Crown Response it may be useful to discuss what reporting you might wish to share with your colleagues.

Key CRU contacts are listed below for your office's use.

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Appendix A: The Crown Response's structure

- The Crown Response was established in late 2018 to ensure the Crown responds to and engages with the Royal Commission in an effective and timely way. A joined-up cross-sector response was needed to reflect the importance, scale, and longevity of the Royal Commission and the breadth of its impact across agencies.
- The Crown Response involves multiple agencies, including ACC, Archives New Zealand, Crown Law Office, Department of Corrections, Manatū Hauora - Ministry of Health, Ministry for Pacific Peoples, Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Justice, Ministry of Social Development, New Zealand Police, Oranga Tamariki, Te Kawa Mataaho, Te Puni Kōkiri, Whaikaha - Ministry of Disabled People.
- Strategic governance of the Crown Response is provided by a Sponsoring Group comprising the Chief Executives of Oranga Tamariki, the Ministries of Education, Health, and Social Development, Whaikaha – The Ministry for Disabled People, and the Crown Law Office. The Chief Executives collectively agreed that the lead Chief Executive for the Crown Response would be Iona Holsted, Secretary for Education, and they report to you for this work.
- The Crown Response Unit (the CRU) drives and coordinates the Crown Response. The CRU is an autonomous unit housed within Oranga Tamariki that acts as primary government relationship lead with the Royal Commission. The CRU's Director jointly reports to the Sponsoring Group Chair and Chief Executive of Oranga Tamariki.
- The CRU is funded through its own appropriation (within Vote Oranga Tamariki, reflecting the CRU's host agency) with you as responsible Minister. Six agencies also have dedicated appropriations. The Crown Response as a whole received one year's funding totalling \$14.425 million in Budget 2022. 9

9(2)(f)(iv)-confidentiality of advice

Appendix B: Ministerial portfolio considerations in the development of the new redress system

PORTFOLIO GROUPINGS	POTENTIAL IMPACTS
Public Service	<ul style="list-style-type: none"> Overall responsibility for system development, including establishment of a new entity and workforce development
Finance	<ul style="list-style-type: none"> Crown baselines and total expenditure – considerations of system investment (including broader workforce capability) and cost versus economic impacts of abuse
Māori Crown Relations Māori Development Whānau Ora	<ul style="list-style-type: none"> Reflecting Treaty relationship in system design and operation Impacts of long-term and intergenerational trauma on Māori wellbeing (across all dimensions) Supporting whānau wellbeing and development through a focus on whānau as a whole
Children Disability Issues	<ul style="list-style-type: none"> Intersections with major change processes and strategic initiatives underway in systems touching on key vulnerable populations Need to consider access to and interfaces between redress and care systems
Corrections Women Diversity, Inclusion and Ethnic Communities Youth Pacific Peoples	<ul style="list-style-type: none"> Supporting access to system and supporting services by and for key population groups Interfaces with and contributions to key strategies and action plans for wellbeing, safety, and full social participation
Education Social Development and Employment ACC Health Whānau Ora Internal Affairs Prevention of Family and Sexual Violence	<ul style="list-style-type: none"> Provision of or access to supporting services for survivors, including additional demand, workforce capacity and capability considerations, records control, information provision, investment trade-offs and potential economies of scale Interfaces and flow on effects between the redress system and other support systems, in particular ACC, including potential increased costs and resulting trade-off decisions Interfaces with strategies to improve broader wellbeing and safety, including avoiding duplication and identifying opportunities for shared resources and development
Attorney-General Justice	<ul style="list-style-type: none"> Longer term policy work programme will need to consider potential human rights and access to justice issues as they relate to abuse survivors, and how these can be improved without creating unintended legal consequences for other groups Ensuring the redress system observes principles of natural justice and procedural fairness

Appendix C: Reports released to date by the Royal Commission

PUBLISHED	REPORT TITLE	REPORT DESCRIPTION
September 2020	Economic cost of abuse in care	Provides a high-level estimate of the cost of abuse in care of children, young people, and vulnerable adults in the care of State and faith-based institutions in New Zealand between 1950 to 2019.
October 2020	Indicative estimates of the size of cohorts and level of abuse in State and faith-based care – 1950 to 2019	Provides indicative estimates of: i) the numbers of people who were in various settings of State care and faith-based care from 1950 to 2019; and, ii) the numbers of people who suffered abuse in State and faith-based care, to the extent known.
December 2020	Interim Report – Tāwharautia: Pūrongo o te Wā (Tāwharautia)	Identifies key themes and common issues from the experiences shared with the Royal Commission so far.
April 2021	Issues faced by ACC Claimants	Identifies issues facing survivors of abuse in care when seeking cover, compensation, and rehabilitation from the Accident Compensation Corporation.
April 2021	Matters relating to ACC and survivors of abuse in care	Identifies matters relating to Accident Compensation Corporation and survivors of abuse in care when seeking cover and other entitlements.
July 2021	Hāhā-uri hāhā- tea, Māori involvement in State Care 1950-1999	This independent research was commissioned by the Crown Response to the Abuse in Care Inquiry and provided to the Royal Commission to help understand what sits behind Māori involvement with the State care system, its impacts, and how Māori involvement has changed over time.
December 2021	He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui	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.
August 2022	Care to Custody: Incarceration Rates Research Report	The Care to Custody: Incarceration Rates Research Report analyses the interagency records of more than 30,000 children and young people spanning five decades.
September 2022	Tell Me About You: A life story approach to understanding disabled people's experiences in care (1950-1999)	Provides an insight into the lives of people with learning disabilities and neurodiversity, in State and faith-based care between 1950 and 1999.
December 2022	Beautiful Children – Inquiry into the Lake Alice Child and Adolescent Unit	This case study examines the torture, tūkino (abuse, harm and trauma) and neglect suffered by children and young people admitted to Lake Alice Psychiatric Hospital's child and adolescent unit from 1972 to 1980.

Appendix D: The Crown Response Unit's key work programme to October 2023

CROWN RESPONSE TO ABUSE INQUIRY: KEY WORK PROGRAMME DATES TO OCTOBER 2023

JANUARY 2023

APRIL 2023

JULY 2023

OCTOBER 2023

REDRESS SYSTEM DESIGN

Appointment process for the design and advisory groups. Terms of Reference agreed by Cabinet.

High-level design work to develop proposals for reporting to the Minister for the Public Service to consider and then take recommendations to Cabinet

Cabinet decisions on high-level system design proposals

Detailed implementation design and planning, with ongoing Ministerial and Cabinet decision making.

Final decisions for Budget 2023

Budget 2024 proposal for full redress system funding

9(2)(f)(iv)-confidentiality of advice

ROYAL COMMISSION'S CONTINUING WORK

Marylands report (TBC)

Royal Commission final report

Response work on Royal Commission's wider findings and recommendations