



# Whanaketia

Puretumu Torowhānui, Holistic Redress  
*Tiritiria ki toi whenua*



THROUGH PAIN AND TRAUMA, FROM DARKNESS TO LIGHT

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

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# Whakairihia ki te tihi o Maungārongo

# He karakia

E tāmara mā, koutou te pūtake o ēnei kōwhiringa, kua horaina nei  
E tohe tonu nei i te ara o te tika  
E ngaki tonu ana i te mārā tipu  
Anei koutou te whakairihia ki te tihi o  
Maungārongo, kia tau te mauri.

Rukuhia te pū o te hinengaro  
kia tāea ko te kukunitanga mai o te whakaaro nui.  
Kia piere ko te ngākau mahora  
kia tūwhera mai he wairua tau.

Koinei ngā pou whakairinga i te tāhuhu  
o te Whare o Tū Te Mauriora.  
Te āhuru mōwai o Te Pae o Rehua,  
kaimuru i te hinapōuri,  
kaitohu i te manawa hā ora,  
kaihohou i te pai.

Nau mai e koutou kua uhia e ngā haukino  
o te wā, kua pēhia e ngā whakawai a ngā tipua nei,  
a te Ringatūkino rāua ko te Kanohihuna.

Koutou i whītiki i te tātua o te toa,  
i kākahu i te korowai o te pono,  
i whakamau i te tīpare o tō mana motuhake,  
toko ake ki te pūaotanga o te āpōpō e tatari mai nei i tua o te pae,  
nōu te ao e whakaata mai nei.

Kāti rā, ā te tākiritanga mai o te ata,  
ā te huanga ake o te awatea,  
kia tau he māramatanga,  
kia ū ko te pai, kia mau ko te tika.  
Koinei ko te tangi a te ngākau e Rongo,  
tūturu ōwhiti whakamaua  
kia tina, tina!  
Hui e, tāiki e!

– *Waihoroi Paraone Hōterene*

To you upon whom this inquiry has been centered  
Resolute in your pursuit of justice  
Relentless in your belief for life  
You have only our highest regard and respect,  
may your peace of mind be assured.

Look into the deepest recesses of your being  
and discover the seeds of new hope,  
where the temperate heart might find solace,  
and the blithe spirit might rise again.

Let these be the pillars on which the House of Self,  
reconciliation can stand.  
Safe haven of Rehua,  
dispatcher of sorrow,  
restorer of the breath of life,  
purveyor of kindness.

Those of you who have faced the ill winds  
of time and made to suffer,  
at the hands of abusers and the hidden faces of persecutors, draw near.

You who found courage,  
cloaked yourselves with your truth,  
who crowned yourself with dignity,  
a new tomorrow awaits beyond the horizon,  
your future beckons.

And so, as dawn rises, and a new day begins,  
let clarity and understanding reign,  
goodness surrounds you and  
justice prevails.

Rongo god of peace, this the heart desires,  
we beseech you,  
let it be,  
it is done.

– *Waihoroi Paraone Hōterene*

## **Tiritiria ki toi whenua**

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The name of this Part comes from the line in the waiata that refers to the nurturing of the potential of survivors and their opportunities for the future. It is used here to highlight the critical importance of a correct, just and enduring implementation of holistic redress for survivors and their whānau and for all those in care in times to come where this is needed.



### **Pānui whakatūpato**

Ka nui tā mātou tiaki me te hāpai ake I te mana o ngā purapura ora I māia rawa atua nei ki te whāriki I ā rātou kōrero ki konei. Kei te mōhio mātopu ka oho pea te mauri ētahi wāhanga o ngā kōrero nei e pā ana ki te tūkino, te whakatūroro me te pāmamae, ā, tērā pea ka tākirihia 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 rongō I te pouri. Heoi, mehemea ka whakataumaha tēnei i ētahi o tō whānau, me whakapā atu ki tō tākuta, ki tō ratongo Hauora rānei. Whakatetia 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.

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# Kuputaka Glossary

| <b>Term</b>               | <b>Explanation</b>  |
|---------------------------|---|
| <b>biculturalism</b>      | The co-existence of two distinct cultures.  |
| <b>civil claims</b>       | A claim for damages (often in the form of financial compensation) or other remedies pursued through courts, tribunal or other dispute resolution processes. |
| <b>civil liability</b>    | The legal obligation of a person or organisation to pay damages or compensation to another.   |
| <b>civil litigation</b>   | Formal legal court proceedings between private individuals or organisations that seek to resolve a dispute.   |
| <b>exemplary damages</b>  | Damages or compensation awarded to punish a party for particular conduct. They are punitive in nature rather than compensatory.                             |
| <b>impunity</b>           | Exemption from punishment or receiving consequences.  |
| <b>limitation defence</b> | A defence to a legal claim that excludes liability on the basis that the legal claim has not been filed within a period of time as required by law.         |
| <b>limitation period</b>  | A period of time following an event or events during which a legal claim can be filed for damages or other remedies.  |
| <b>limitation law</b>     | A law that limits or excludes liability by reference to the time when civil proceedings are commenced.  |
| <b>limitation reforms</b> | Legislative reform that seeks to amend the law relating to limitation.  |

| <b>Term</b>                | <b>Explanation</b>   |
|----------------------------|--|
| <b>oranga</b>              | A reo Māori term for life, life-time, life-span, life-long.  |
| <b>rongoā Māori</b>        | A traditional Māori healing system; a holistic and cultural healing practice incorporating deep, personal connections with the natural environment.  |
| <b>puretumu torowhānui</b> | A holistic approach to redress that seeks to restore a person's mana and dignity, to help them heal from trauma and to provide financial compensation that is fair and truly reflects the harm done to them. |
| <b>psychopaedic</b>        | Outdated Aotearoa New Zealand term to distinguish people with a learning disability from people experiencing mental distress.  |
| <b>urupā</b>               | A reo Māori term for a burial ground.  |



"We are here to make  
sure this never happens  
again and will continue  
doing this sort of work  
in their memory!"

**DARRYL SMITH**  
NZ European

# Ūpoko | Chapter 1

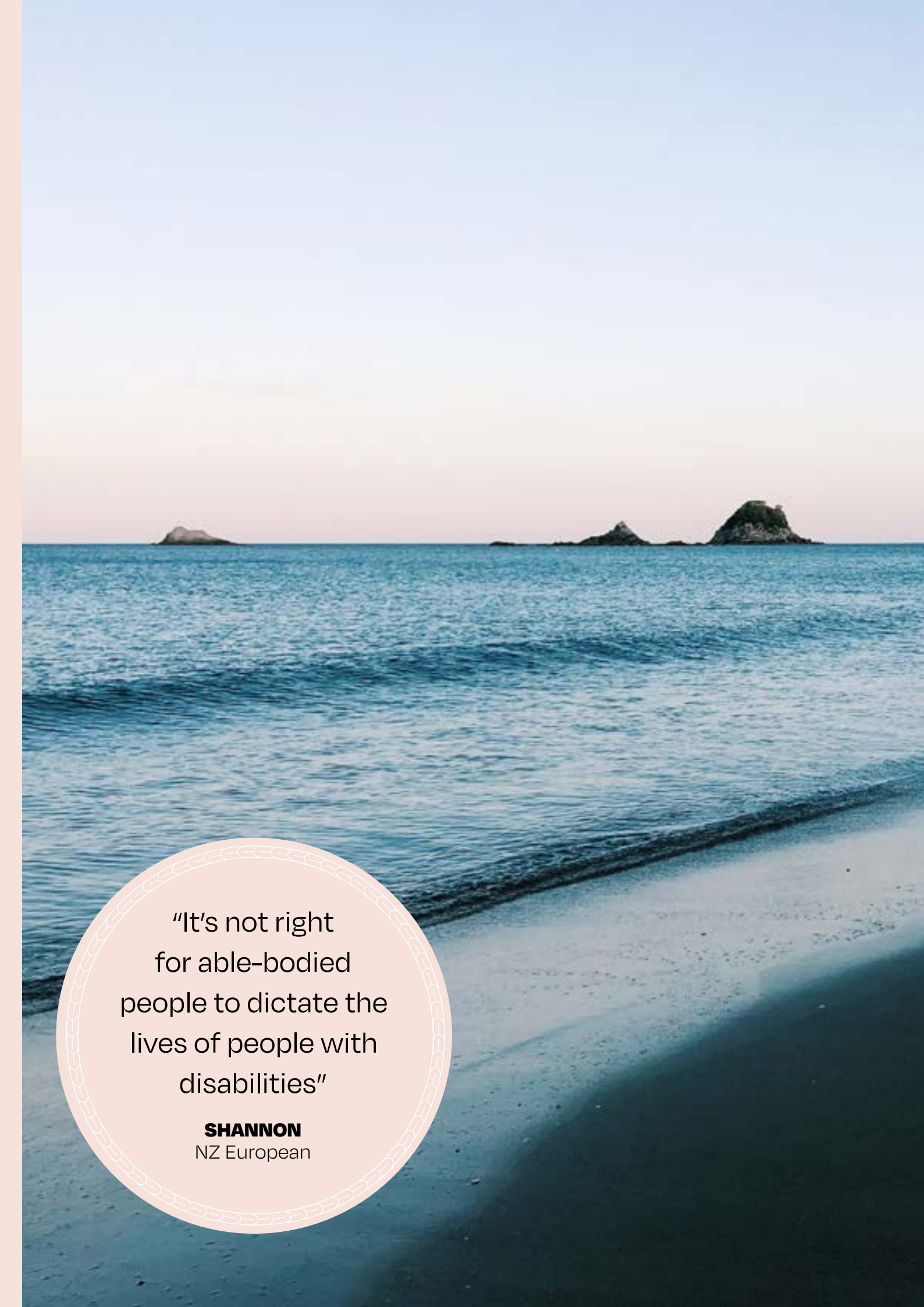
## He whakatakinga

### Introduction

1. In December 2021, the Inquiry delivered its interim report He Purapura Ora, he Māra Tipu – From Redress to Puretumu Torowhānui to the Governor-General. It included 95 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 (indirect State care), and faith-based institutions. 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 the Inquiry refers 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 – abuse, harm and trauma – in care.<sup>1</sup>
2. In Chapter 2, the Inquiry assesses the responses by Government and faith-based institutions to He Purapura Ora, he Māra Tipu and their progress to implement the Inquiry's recommendations.
3. Chapter 3 provides the Inquiry's conclusions on the implementation of its recommendations by the Government and faith-based institutions.

<sup>1</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui: Volume 1 (2021, page 264).



"It's not right  
for able-bodied  
people to dictate the  
lives of people with  
disabilities"

**SHANNON**  
NZ European



# Shannon

**Hometown:** Ōtepoti Dunedin

**Age when entered care:** 7 years old

**Year of birth:** 1984

**Time in care:** 1991–current

**Type of care facility:** Foster home; residential homes.

**Ethnicity:** NZ European

**Whānau background:** Shannon has a younger sister and brother. He doesn't know his father, but had a stepfather for a while.

**Current:** Shannon has autism, epilepsy and dyspraxia. He is non-speaking and uses a text-to-speech facilitated communication device. Shannon lives alone with support staff who care for him. He has a close relationship with his foster sister who is also his welfare guardian.



**In third form I wrote a piece called 'Life in my own world':**

***"People sometimes call me dumb, or they say I am a moron. What they don't realise is that I am a clever cookie. A clever cookie in a silent world. Silent because I can't talk or communicate well. Silent because I am on my own in it. But silence isn't bad, just scary sometimes."***

I'm Shannon. I want people to know that living with Autism is great, and I wouldn't change a thing. We're just people who see the world through a different lens. That lens isn't wrong, and we aren't less.

I use a Lightwriter to communicate – it's a text-to-speech device that lets me communicate, though I need a facilitator to help me. I got it when I was 15 years old, and I could finally speak for the first time. I felt free to be me – it was exhilarating to have a voice.

I went into care when I was 7 years old. My mum loves me but she couldn't take care of me when I was young, so I went into a foster home and then to a farm and residential homes. I liked the foster home at first, but I had no proper way of communicating. Then bad things happened, and I left to go to the farm.

I loved the farm. We would go on trips and feed the animals. I was looked after very well. My foster sister learnt to do facilitated communication and made up new ways to communicate. She taught me how to be okay with feelings. I loved the other staff too.

When I was 15 years old I moved into a residential home. I had good staff and I liked most of my flatmates. I could do facilitated communication with some staff and that was really good.

I was at high school at the time. I did very well there, and some teachers could facilitate with me. I got sixth place for maths in my 6th form year group. I also really like writing and I'm bloody good at it. After high school I studied creative writing at Massey University.

I was assaulted by a flatmate while I was at the residential home but I had been taught to scratch and he couldn't hurt me. He got taken away. Then I moved to another home where there were fewer people and I liked it better. But then I had to go back to the first house – I didn't want to but I had to.

When I returned, management had changed. I wasn't allowed to see my foster sister for a long time, and I wasn't told why. Staff yelled at me and I was put on hard drugs that made me feel dopy and stupid. They didn't ask me if I wanted to be on those drugs. Some staff hurt me and I wasn't happy. They'd speak badly to me, and sometimes grab my shoulders and arms. They'd swear at me and treat me like a moron. This made me feel shit.

My Lightwriter had gone missing, but I could still communicate through a facilitation board. However, management took this off me. Some able-bodied people had decided they didn't believe in facilitated communication, despite the fact dozens of people had facilitated with me over the years. So all my communication was suddenly gone. I didn't have a say in any of it. They took my voice away from me.

I wasn't allowed to go out and do things. I wasn't able to be free and I couldn't tell anyone anything.

My foster sister got me out of there and it was the best move ever. I was so happy to live with her. I got to be myself. She did everything for me. I got a new Lightwriter and started doing stuff I liked. I was happy.

I now live in my own house and I love it. I love being independent – I feel in control of my life. I like watching television and reading. I like music too. I have a wonderful singing teacher. I also volunteer at the Fringe Festival in Dunedin. I deliver pamphlets and posters, and I do a great job. It's my favourite thing.

I love making choices for myself. But I want to make more. I still struggle sometimes because my support staff can't do facilitated communication and need my foster sister to help me tell them things. But it's still better than living in a home.

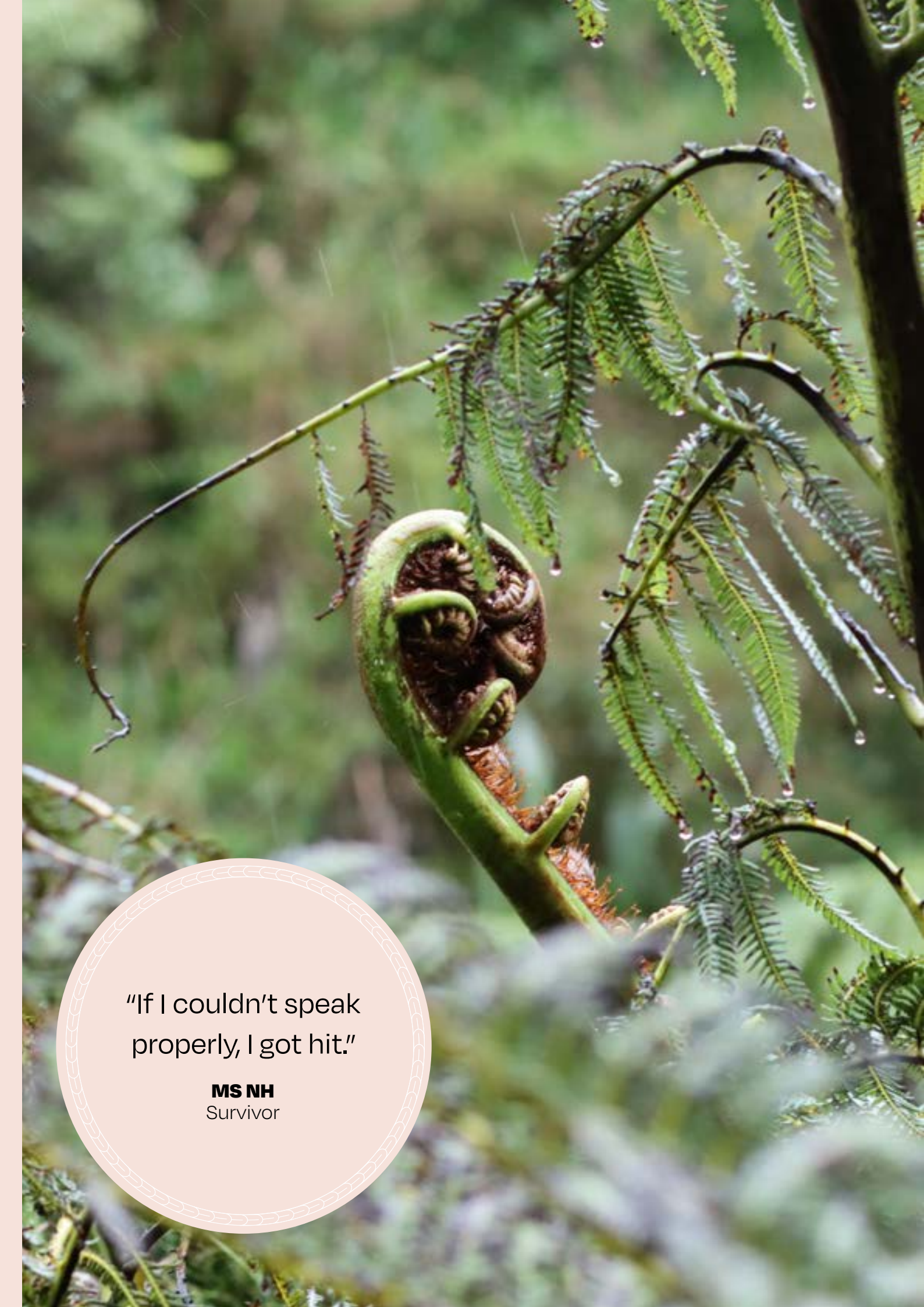
I recently got a new Lightwriter – they cost \$8,000 and I had lots of trouble getting the funding for a new one. There is also no funding for specialised computer equipment, which I need so I can go back to university.

My foster sister has given me the best life I've had yet, but it's not everything that I should rightfully have. It's not right for able-bodied people to dictate the lives of people with disabilities – I want to be able to live just like everyone else. I should have a community that fully accepts me, computers I can use, a job that's paid, lots of able-bodied friends who aren't paid, and my own home designed for my individual needs. I have to pay for a speech and language therapist out of pocket to train my support staff to learn how to communicate with me. This is expensive, and I am unable to do this full time.

People need to stop treating us like idiots and society needs to respect that different ways of being are equal to able-bodied ways. Our homes and lives need to be designed around and for us, because why should we have to fit into able-bodied boxes? Everyone has the right to be different.<sup>2</sup>

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<sup>2</sup> Witness statement of Shannon (19 June 2022).



"If I couldn't speak properly, I got hit."

**MS NH**  
Survivor

# Ms NH

**Hometown:** Perth, Australia

**Age when entered care:** 5 years old

**Year of birth:** 1965

**Time in care:** 1970–1979

**Type of care facility:** School for the Deaf – Kelston School for the Deaf in Tāmaki Makaurau Auckland.

**Ethnicity:** NZ European

**Whanau background:** Ms NH's mother, sister and brother are still alive. They live in their own house.

**Currently:** Ms NH lives by herself and is on a pension. She enjoys spending time sewing and crocheting.



**I was born Deaf and blind in my right eye. I'm the only Deaf member of my family, and growing up my family communicated orally and I couldn't understand everything. I went to Kelston at 5 years old. I was scared and felt unsure about being there. I didn't know I was Deaf or different to my family, and I was confused. I also didn't know my mum was going to be leaving.**

I started feeling depressed right from my first day. I was thirsty and drank water from a fountain, and I didn't know that I wasn't allowed to drink it. A staff member grabbed me by the throat and yelled at me and hit me.

We didn't learn anything – they didn't teach us anything and there was no learning, it was all about learning how to speak. We had to use the oral method to say our name and the teacher would make us hold our hands to our throat so we could feel the vibrations. We had to do this over and over again. We also had to sing, but we couldn't hear the music.

After breakfast we had to line up to get toothpaste. When it was my turn, the teacher who had hit me insisted I vocalise the word 'please'. I tried many times and she got angry that I couldn't get it right. She hit my head and pushed me against the wall, then told me to wait at the end of the line. I tried again and again, and she hit me as I got it wrong. I was sobbing uncontrollably. The other girls weren't being hit. They just stared at me.

A similar thing happened in the dining room – if we didn't verbalise 'please' properly, we had to go to the back of the line, and if I got it wrong I would be hit. Sometimes I'd repeat this three or four times, going to the back of the line because I couldn't hear or understand. Other students sometimes had to go to the back of the line, but I never saw them being hit for getting it wrong. When I eventually got my food, I would be eating and still crying.

One time I was washing my hair in the sink. I checked first to make sure the teacher wasn't around. It was safe. Then I felt my face being shoved down into the sink, and someone was trying to drown me in the water. I couldn't breathe, and it went on for so long. I saw it was the teacher, pushing my head into the water. I hit her hard and ran away fast. I didn't know how to tell anyone about it.

The same day we had fish and chips for dinner. I hated fish so I was just eating the chips. The teacher saw I wasn't eating the fish, so she came over to me, picked up my fork with fish on it and forced me to eat it by squeezing my cheeks, making my mouth open. A similar thing happened at breakfast the next day – I wasn't eating porridge, and another staff member came up to me angrily, hit my hand with the spoon and forced me to eat the porridge. I forced it down and then vomited everywhere.

I was so depressed at Kelston. It got worse and worse the longer I was there. I felt my head get so tight and sore. I just wanted to go home and be with my mum.

I didn't tell my parents about what was going on because I couldn't communicate. The staff members at Kelston saw me being abused but said nothing. I didn't have any friends and I was very isolated.

The teacher abused me nearly every day. She would hit me, whack my head, and slam me into walls. I remember always being sore and having bruises. I was also picked on by other students and bullied.

When I was 14 I moved overseas with my family, and I felt my depression slowly releasing away, and my wellbeing began to improve. Deaf people were shocked that I hadn't learned any sign language. I got a better education and learned sign language so I could communicate. My mother asked me if I wanted to move back to New Zealand and I said no. I don't want to go back, and I haven't been back since.

When I was 30 I started telling my mother all the things that had happened to me. My parents went to night classes to learn sign language so we could communicate properly.

I can never forget the abuse I received from people who were paid to be there for me and care for me. The trauma has stayed with me. I still have awful thoughts of how I was treated, and I'm still scared to see those mean teachers and staff members.<sup>3</sup>

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<sup>3</sup> Witness statement of Ms NH (28 October 2022).

# Ūpoko | Chapter 2

## Te whakatinanatanga o te Puretumu Torowhānui i tēnei wā Puretumu Torowhānui: implementation to date

| Recommendation   | Summary of whether it has been implemented |
|--|--|
| Independent puretumu torowhānui scheme   | No   |
| Māori collective and a purapura ora collective   | No   |
| Puretumu torowhānui scheme to include all survivors  | Unclear                                    |
| National apology   | Partly                                     |
| Interim listening service  | Yes  |
| Guidelines, policy and procedures for record-keeping   | Partly                                     |
| Advance payments for all seriously ill or elderly survivors  | No   |
| Use best endeavours to resolve claims before the puretumu torowhānui scheme is established and offer settlements that do not prejudice survivors' rights | Partly                                     |
| Resource training and workforce skill development  | No   |
| Government to immediately begin stocktake of available oranga (welfare) services   | No   |
| Māori collective and purapura ora collective commission an expert review to make recommendations on extra services needed                                | No   |
| Awareness campaigns and research   | Partly                                     |

| Recommendation  | Summary of whether it has been implemented  |
|---|---|
| Consider funding memorials, ceremonies, and a national project to investigate unmarked graves and urupā or graves at psychiatric hospitals and psychopaedic sites | Partly  |
| Civil litigation reform, Law Commission review and expanding WorkSafe's focus areas to include abuse in care  | No  |
| Until limitation reform enacted, institutions should only rely on limitation defences where a fair trial will not be possible                                     | No statement from Government that reliance on limitation defences will be limited in this way   |
| Review and consider increasing the legal aid rates for abuse in care cases and offer training for lawyers interested in this work                                 | Increases to legal aid rates generally have occurred. No specific review or increase for abuse in care cases, and no training offered. Request by Cooper Legal for an increased rate declined |
| Model litigant policy and guide for responding to abuse in care cases   | No  |

## Te pūnaha puretumu torowhānui Puretumu torowhānui system

4. The Inquiry's recommendations on the new puretumu torowhānui system it proposed included that the system, and those designing and operating it, should give effect to a set of principles and te Tiriti o Waitangi and its principles, particularly the right to tino rangatiratanga. The system should also be consistent with the commitments Aotearoa New Zealand has under international human rights law, including that effective redress must be available for human rights violations.<sup>4</sup> The principles and purpose the Inquiry recommended for the puretumu torowhānui system<sup>5</sup> were endorsed in principle by Cabinet in 2022.

<sup>4</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 266 to 267).

<sup>5</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 266–268).



## **He kaupapa puretumu hou kua horahia, he ohu hoahoa, me te ohu kaitohutohu kua whakatūria**

### **New independent redress scheme announced, design and advisory group established**

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5. In He Purapura Ora, he Māra Tipu, the Inquiry recommended that the Government establish a fair, effective, accessible and independent puretumu torowhānui scheme.<sup>6</sup> The Inquiry also recommended the establishment of a Māori collective<sup>7</sup> and a purapura ora (survivors) collective.<sup>8</sup>

### **He kaupapa motuhake me ngā angawā timatanga**

#### **New independent scheme and initial timeframes**

6. On 15 December 2021, the then Government announced that survivors would have access to a new, independent holistic redress scheme. The Government also announced that a detailed design process for its new scheme would begin in mid-2022. At that stage, the Government stated that its aim was for Cabinet to make final decisions about the new scheme in mid-2023, and to introduce it soon after that.<sup>9</sup>
7. In December 2022, those timeframes were revised. By July 2023, Cabinet was to consider high-level design proposals rather than making final decisions. Full system design and costs would be considered as part of Budget 2024.<sup>10</sup>

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6 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 277).

7 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 271).

8 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 273).

9 Media release, Department of Internal Affairs, Survivors of abuse in state and faith-based care will have access to new independent redress process (15 December 2021), <https://www.beehive.govt.nz/release/survivors-abuse-state-and-faith-based-care-will-have-access-new-independent-redress-process>.

10 New Zealand Government Cabinet paper, Responding to the Royal Commission into Historical Abuse in Care's redress findings (2022, page 21, point 15).

## Te arowhāinga mō te ohu hoahoa me te ohu kaitohutohu

### Redress design and advisory group, purpose

8. Hon Andrew Little, then Minister for the Public Service, announced in mid-2023 that the Government had decided a Redress Design Group supported by an Advisory Group would lead the high-level design of the new scheme. It decided not to establish the collectives the Inquiry recommended.
9. The principles and purpose the Inquiry recommended were also included in the Design and Advisory Groups' terms of reference.<sup>11</sup> The Government proposed that its new redress scheme would cover abuse in State, indirect State and faith-based care, as the Inquiry recommended.<sup>12</sup> However, this was subject to the Government agreeing suitable funding arrangements for the new scheme with faith-based and other relevant institutions.<sup>13</sup> The Government also stated that the Design Group would need to consider phasing non-state care survivors into the new scheme.<sup>14</sup>
10. As the Inquiry recommended,<sup>15</sup> the Government proposed that the new scheme include current and future survivors of abuse and neglect.<sup>16</sup>
11. One of the design group's co-chairs was a survivor, and both co-chairs were Māori.<sup>17</sup> The design and advisory groups' members were predominantly survivors.<sup>18</sup> The membership was also made up of representatives including Pacific Peoples, disabled people, rangatahi and Rainbow, academia and survivor advocates.<sup>19</sup>

11 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 277); New Zealand Government Cabinet paper, Responding to the Royal Commission into Historical Abuse in Care's redress findings (2022, paras 6, 13, 35); Cabinet Social Wellbeing Committee, Terms of Reference for the Design and Advisory Groups preparing high level proposals for a redress system for survivors of abuse in care (22 May 2023, para 7, paras 34–35).

12 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 285).

13 Recommendation 21 of He Purapura Ora, he Māra Tipu, Volume 1 states: "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" in Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 285).

14 New Zealand Government Cabinet paper, Responding to the Royal Commission into Historical Abuse in Care's redress findings (2022, para 46).

15 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 285).

16 New Zealand Government Cabinet paper, Responding to the Royal Commission into Historical Abuse in Care's redress findings (2022, para 8).

17 Cabinet Social Wellbeing Committee, Design Group, Redress System for Survivors of Abuse in Care: Appointment (29 March 2023, pages 2–3, paras 11, 12 and 18).

18 Cabinet Appointments and Honours Committee, Design and Advisory Groups, Redress System for Survivors of Abuse in Care: Appointments (3 May 2023, pages 4–5, para 11).

19 Cabinet Appointments and Honours Committee, Design and Advisory Groups, Redress System for Survivors of Abuse in Care: Appointments (3 May 2023, pages 4–5, para 11).

## **Te takaroa o te whai whakatau mō te pūnaha whaitika**

### **Delays to decision making on Redress System**

12. The Government's new scheme was not introduced in 2023, as was the stated aim in December 2021. By June 2023, the redress design group and advisory group had only just been established and their members formally welcomed.<sup>20</sup> As a result, Cabinet did not receive the design group's high-level design proposals in July 2023. Hon Erica Stanford, the Minister Responsible for the Crown's response to the Inquiry received the Design group's advice in February 2024 to consider, following appointment as the responsible Minister.<sup>21</sup>
13. In March 2024 Hon Erica Stanford advised Cabinet that she intended to provide it with papers on options for progressing decisions on redress system design and that a ministerial group will also be established to assist in overseeing the Crown's response to the Inquiry's findings and recommendations.<sup>22</sup> At the date this report was finalised there was no set timeframe for introducing the new independent puretumu torowhānui, holistic redress, scheme.

### **Kāore he kiritōpū, pērā i tūtohutia**

#### **No collectives as recommended**

14. The process taken for designing the new scheme is inconsistent with the Inquiry's recommendations.
15. The Inquiry recommended that the role of the independent Māori collective was to include leading the design of the puretumu torowhānui scheme and carrying out other work relevant to the puretumu torowhānui system. This included working with the Government on all the recommendations in He Purapura Ora, he Māra Tipu, and agreeing on any draft legislation required. The Māori collective was also to consider whether there should be a separate puretumu torowhānui scheme for Māori.<sup>23</sup>
16. The Māori collective was to comprise of Māori with relevant expertise and lived experience. The purapura ora collective was to be a key way for survivors to be actively involved in the design of the puretumu torowhānui scheme and system on an ongoing basis. It would also advocate for survivors and provide expert advice amongst other functions.<sup>24</sup>

<sup>20</sup> See Crown Response to the Abuse in Care Inquiry, Pānui (29 June 2023), which referred to a pōwhiri at Waiwhetū marae on 19 June 2023 to welcome the Design and Advisory Group members.

<sup>21</sup> New Zealand Government Cabinet paper, Responding to the Royal Commission into Historical Abuse in Care's redress findings (2022, para 30).

<sup>22</sup> Cabinet Social Outcomes Committee, Minute of Decision, Crown Response to the Royal Commission of Inquiry into Abuse in Care: Overview and upcoming decisions (27 March 2024, paras 10 to 12); Cabinet Social Outcomes Committee, Crown response to the Royal Commission of Inquiry into Abuse in Care: Overview and upcoming decisions (n.d., paras 58 and 59).

<sup>23</sup> New Zealand Government Cabinet paper, Responding to the Royal Commission into Historical Abuse in Care's redress findings (2022, para 12).

<sup>24</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 272–273).

17. The Inquiry considered this structure to be consistent with te Tiriti o Waitangi. It appropriately reflected the disproportionate number of tamariki, rangatahi and pakeke Māori who entered into care during the Inquiry period and the broader impacts on whānau, hapū and iwi, which meant that Māori needed to influence the scheme's design. The Inquiry considers that the right approach would have been for the Government to agree that the scheme's design be Māori-led across the board.<sup>25</sup> The Inquiry also considered that, with the purapura ora collective's involvement, its recommended structure would have contributed to strong survivor involvement, not only in the design of the puretumu torowhānui scheme but also in the wider puretumu torowhānui system.
18. The structure the Government chose was considerably more limited. The redress design group's functions were mostly restricted to providing the Government with high-level design proposals for the Government's new redress scheme, which the Government would consider and make decisions on.<sup>26</sup> After this, detailed design work will be co-ordinated by the Crown Response Unit, and it is unclear whether the redress design group will have any further role.<sup>27</sup> The advisory group's role was limited to commenting on "key elements" of the design group's high-level design proposals.<sup>28</sup>

## **Te tono whakauru a te Kāwanatanga**

### **The Government's 'phasing in' proposal**

19. The Inquiry is concerned that the Government's new redress scheme may not be universal, in that it may not be open to survivors of faith-based institutions from the outset. It is also unclear whether it will be open to survivors of indirect State care institutions. Central to the puretumu torowhānui scheme the Inquiry recommended is that it would be open to all survivors of abuse in care regardless of where the abuse and neglect occurred (whether in State, indirect State, or faith-based care), and from the date the scheme is introduced.<sup>29</sup> If that does not occur, the new scheme's introduction will not remedy the inconsistencies, complexity and confusion that currently exist due to multiple redress schemes being run by State and faith-based institutions.

25 See in this regard the Crown's agreement regarding the need for Māori-led rather than Crown-led reform of Māori self-government institutions, in Waitangi Tribunal, Whāia te Mana Motuhake – In pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim (Pre-publication version), (Wai 2417), (2014, page 349).

26 Cabinet Social Wellbeing Committee, Terms of Reference for the Design and Advisory Groups preparing high level proposals for a redress system for survivors of abuse in care (22 May 2023, paras 13, 16, 17, 24 and 27).

27 Cabinet Social Wellbeing Committee, Terms of Reference for the Design and Advisory Groups preparing high level proposals for a redress system for survivors of abuse in care (22 May 2023, para 17, page 22, Appendix).

28 New Zealand Government Cabinet paper, Responding to the Royal Commission into Historical Abuse in Care's redress findings (2022, para 60); Cabinet Social Wellbeing Committee, Terms of Reference for the Design and Advisory Groups preparing high level proposals for a redress system for survivors of abuse in care (22 May 2023, page 4, paras 19–20).

29 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 277).

## **Te whakamahinga o ngā whakatauritanga taiwhenua, tawāhi hoki e te Kāwanatanga**

### **Domestic and international comparators used by the Government**

20. The 1 December 2022 Cabinet paper setting out the parameters for the new Government redress scheme stated that its cost was difficult to estimate at that stage but was likely to be high, and payments would be one of the factors affecting cost.<sup>30</sup> The paper included indicative cost scenarios, for example, scenarios based on the average payment under the Ministry of Social Development's redress process and the mid-point of the payment range in Scotland's redress system, converted to New Zealand dollars.
21. While the cost scenarios set out in the cabinet paper were referred to as "purely indicative", it is of concern to the Inquiry that the comparators used were at the lowest ends of the range. In He Purapura Ora, he Māra Tipu the Inquiry found that the Ministry of Social Development's average payment was very low when compared with overseas redress schemes. The average payment predicted in Scotland's redress scheme was also the lowest average payment of the international comparisons referred to in He Purapura Ora, he Māra Tipu.<sup>31</sup>

## **Te whakarite i tētahi whakapāha ā-motu me te tuku i roto i te tika**

### **Delivery of a meaningful national apology**

22. The Inquiry recommended that the Government, indirect State care providers and relevant faith-based institutions publicly acknowledge and apologise for the tūkinō – abuse, harm and trauma – inflicted on and suffered by survivors, communities and Aotearoa New Zealand.<sup>32</sup> The Inquiry recommended this include a public apology to survivors by the Governor-General, the Prime Minister, and heads of faiths and other institutions. The Inquiry stated that matters such as the content of the apology should be determined by the Government, the Māori collective, the Purapura Ora collective and relevant institutions, in collaboration with survivors.

<sup>30</sup> New Zealand Government Cabinet paper, Responding to the Royal Commission into Historical Abuse in Care's redress findings (2022, para 91).

<sup>31</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 305).

<sup>32</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 275).

23. On 8 March 2023, the Crown Response Unit advised that Cabinet had agreed that a public apology for abuse in care would be made in August 2023, two months after the Inquiry's final report was initially due.<sup>33</sup> The Crown Response Unit was leading this work in consultation with other agencies, survivors, and groups including the National Iwi Chairs Forum.<sup>34</sup> Cross-political party involvement was also being sought, in recognition that abuse in care has occurred across multiple Government administrations.<sup>35</sup> In April 2023, the timeframe for the apology was deferred until after the Inquiry presents its final report to the Governor-General.<sup>36</sup>
24. In March 2024, the Cabinet Social Outcomes Committee agreed that a public apology would be delivered as soon as practicable after the final report is presented. Subject to Cabinet agreement, detailed planning for an apology to be delivered towards the end of 2024 will begin. Minister Responsible for the Crown Response to the Inquiry Hon Erica Stanford will work with the Prime Minister and Governor-General on the apology's timing, wording and other details, and options for the apology's wording will be brought to Cabinet.<sup>37</sup>
25. The Inquiry welcomes the Government's intention to make a public apology and the work carried out to date on this. However, the Inquiry is concerned that the Māori collective and the purapura ora collective the Inquiry recommended will have no role in determining the content of this apology and related matters. Also, it is not clear what role faith-based and indirect State care institutions will have.

## **Te whakatū i tētahi ratonga whakarongo taupua** **Establishing an interim listening service**

26. The Inquiry recommended that the Government fund a listening service to cover the period between the end of the Inquiry and establishment of the new puretumu torowhānui scheme.<sup>38</sup> In response to that recommendation, the Government established an interim listening service, the Survivor Experiences Service. This has been in operation since 1 July 2023 and will continue until the Government's new redress scheme is established.<sup>39</sup>

33 Letter from Crown Response to the Abuse in Care Inquiry (Royal Commission of Inquiry into Abuse in Care, 8 March 2023).

34 Letter from Crown Response to the Abuse in Care Inquiry (Royal Commission of Inquiry into Abuse in Care, 8 March 2023).

35 Cabinet Social Wellbeing Committee, Responding to the Royal Commission into Historical Abuse in Care's redress findings – Report back on immediate projects to improve survivors' experience of seeking redress (14 December 2022, page 3, para 17).

36 Crown Response to the Abuse in Care Inquiry, Pānui: Announcement of co-chairs for design and advisory groups and deferral of Royal Commission's report (12 April 2023).

37 Cabinet Social Outcomes Committee, Minute of Decision, Crown Response to the Royal Commission of Inquiry into Abuse in Care: Overview and upcoming decisions (27 March 2024, paras 7 and 8); Cabinet Social Outcomes Committee, Crown response to the Royal Commission of Inquiry into Abuse in Care: Overview and upcoming decisions (n.d., paras 41 and 42).

38 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 349–350).

39 Letter from Crown Response to the Abuse in Care Inquiry (Royal Commission of Inquiry into Abuse in Care, 8 March 2023); See also Survivor Experiences Service website, About, (accessed on 4 June 2024), <https://survivorexperiences.govt.nz/about-the-service/>.

## Te whakatika i ngā āheinga ki ngā mauhanga taurima Improving access to care records

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27. The Inquiry recommended that the Government:
- > develop guidelines on responding to record requests by survivors and on redactions to those records.<sup>40</sup>
  - > complete its work on a policy to streamline the way agencies handle survivor records. The Inquiry stated that the policy should also deal with storing records and the advantages and disadvantages of centralising records.<sup>41</sup> The timeframe the Inquiry gave for the policy work was six months (that is, by June 2022).
  - > urgently review all disposal authorities<sup>42</sup> under the Public Records Act 2005 (or predecessor legislation where relevant) that are relevant to all care records and consider prohibiting the disposal of care records until its work on records was complete.<sup>43</sup>
  - > decide whether Aotearoa New Zealand should introduce a service similar to Australia's Find and Connect service. This Australian service helps people to find historical information about institutional care and to connect with local support groups and services.<sup>44</sup>
  - > review care providers' record keeping practices, consider whether to set a standard governing the records that providers should create and keep, and consider whether those keeping records for care providers should receive training.<sup>45</sup>
28. On 8 March 2023, the Crown Response Unit advised that Cabinet had agreed on five initiatives aimed at improving survivor access to, and control of, their care records, and that these initiatives would be implemented in 2023.<sup>46</sup> The initiatives included "Shared Redaction Guidance" for agencies (State and non-State) releasing personal information requested by people who have been in care.<sup>47</sup> The Crown Response Unit also provided online information for survivors about accessing their records.<sup>48</sup>

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40 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 344).

41 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 344).

42 As the Inquiry said in Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 345), "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."

43 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 346).

44 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 346).

45 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 346).

46 Letter from Crown Response to the Abuse in Care Inquiry (Royal Commission of Inquiry into Abuse in Care, 8 March 2023).

47 Crown Response to the Abuse in Care Inquiry, Ā mātou mahi – Our work (27 November 2023).

48 Crown Response to the Abuse in Care Inquiry, Accessing your records (5 October 2023).

29. Other initiatives for implementation by the Government in 2023-2024 include the design of a records support service and the development of a central care records website. The Inquiry understands that this is in response to its recommendation relating to Find and Connect. These initiatives also include introducing a records retention and disposal project (encompassing a review of disposal authorities), and further cataloguing and indexing care records to improve survivor access.<sup>49</sup> The cataloguing and indexing work was initially referred to as including the digitising of care records.<sup>50</sup> However, the Archives New Zealand website only refers to increasing cataloguing and indexing of care records already held at Archives.<sup>51</sup>
30. While it is positive that these initiatives are in progress, the Inquiry is concerned that the timeframe it recommended for the policy work referred to above was not met. He Purapura Ora, he Māra Tipu refers to the Crown as having advised the Inquiry that it had been working on “an integrated and seamless approach” to obtaining survivor records. The Inquiry’s view was that this work had been going on for a long time, needed to be prioritised and should be completed in six months, together with the other policy work referred to above.<sup>52</sup> The Inquiry is also concerned that most of its other recommendations on records have not been implemented to date. There appears to be little, if any, work on the review of care providers’ record keeping practices. The Inquiry understands that work is being done on long-term disposal authorities and that there is a chief archivist’s moratorium in place until that work has been carried out. However, it is more than two years since the Inquiry made its recommendations and the work is yet to be completed.<sup>53</sup>

49 See: Archives New Zealand, Related records improvement initiatives.

50 Cabinet Social Wellbeing Committee, Responding to the Royal Commission into Historical Abuse in Care’s redress findings – Report back on immediate projects to improve survivors’ experience of seeking redress (14 December 2022, page 2, para 12(e)).

51 See: Archives New Zealand, Related records improvement initiatives.

52 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui, Volume 1 (2021, page 343).

53 Cabinet Social Wellbeing Committee, Responding to the Royal Commission into Historical Abuse in Care’s redress findings – Report back on immediate projects to improve survivors’ experience of seeking redress (14 December 2022, page 13, paras 82–85).



## **Te whakarite me te taki i ngā utu wawe ki ētahi purapura ora**

### **Establishing and processing advance payments to certain survivors**

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31. The Inquiry recommended that the Government establish a mechanism to make advance payments to survivors who were at significant risk of not being able to apply to the puretumu torowhānui scheme because of serious ill-health or age. The Inquiry said that the Government should establish and fund the mechanism, which would be available for all survivors regardless of whether they had been in State or faith-based care. It would be for the Government to determine whether indirect State care providers and faith-based institutions should contribute funding. The Inquiry recommended that applicants for an advance payment should only have to provide a statutory declaration that they were abused rather than evidence. The Inquiry also stated that an advance payment should be the same amount for every survivor.<sup>54</sup>
32. The Inquiry said that any survivor who received the payment should retain their right to make a claim to the new puretumu torowhānui scheme once the scheme had been established. The advance payment would be deducted from any financial payment the survivor received from the scheme.<sup>55</sup>
33. The Government has not provided the advance payments recommended by the Inquiry. Instead, the Government has introduced two rapid payment schemes run by the Ministry of Social Development and the Ministry of Education, and a prioritised settlement payment run by the Ministry of Education.

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54 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 348).

55 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 348).

## Te kaupapa utu tere a Te Manatū Whakahiato Ora Ministry of Social Development's rapid payment scheme

34. On 13 December 2022, the Government announced a rapid payment scheme, initially for survivors with claims with the Ministry of Social Development.<sup>56</sup> The Government decided that MSD should be the first agency to offer rapid payments as it had more claims than the Ministry of Education, Oranga Tamariki and the Ministry of Health. In addition, Oranga Tamariki and the Ministry of Health did not have long wait times for claims. The Government also stated that it understood a "large proportion" of other institutions had no or only a small number of claims.<sup>57</sup>
35. The Ministry of Social Development's rapid payments are available to any survivor who has made a claim, not just survivors who are ill or elderly.<sup>58</sup> A survivor may still choose to have a longer, individualised assessment. However, the ministry advises survivors that an individualised assessment "will take longer to complete given the assessment process requires a more detailed review of a person's care records".<sup>59</sup> A rapid payment is quicker to calculate as care records are only checked to confirm basic information and not checked to see if they support the survivor's claims of abuse.
36. The rapid payment amount may differ from survivor to survivor, rather than being a fixed sum as the Inquiry recommended. The key criterion is the length of time the survivor spent in care. A survivor who spent:
- > less than five years in care will receive \$10,000
  - > five to 15 years in care will receive \$20,000.
  - > 15 years or more in care will receive \$25,000.<sup>60</sup>

56 Media release, Public Service Commission and Ministry of Social Development, Rapid payments starting for historical abuse claimants (13 December 2022), <https://www.beehive.govt.nz/release/rapid-payments-starting-historical-abuse-claimants>.

57 Crown response to the Abuse in Care Inquiry, Briefing: Proposed rapid payment approach for use by agencies operating claims processes for abuse in state care (2 September 2022, para 10).

58 Ministry of Social Development, Letter re: Ministry of Social Development response to Cooper Legal updating witness statement (8 March 2023, para 15).

59 Ministry of Social Development, Rapid payments fact sheet (October 2022).

60 Ministry of Social Development, Rapid payments fact sheet (October 2022).

37. This is based on the Ministry of Social Development's view that the longer a person spent in State care, the more likely it is that they will have been harmed repeatedly.<sup>61</sup> Additional amounts may be added where the survivor has raised concerns relating to:
- > an "NGO-run bush programme". These are defined by the Ministry of Social Development as meaning "bush programmes in isolated settings run by NGO providers who were contracted by Child, Youth and Family or its predecessor agencies to provide care for young people in State care". They include Whakapakari, Moerangi Treks, Eastland Rescue Youth Trust, Tarawera Treks/Tarawera Trust, Wairaka Kokiri and Whaakaro Kotahi Charitable Trust/ Te Tewha Tewha Trust)<sup>62</sup>
  - > inappropriate detention
  - > the New Zealand Bill of Rights Act 1990.<sup>63</sup>
38. The maximum rapid payment available is \$30,000.
39. A survivor who receives a rapid payment may also choose to receive their care records, access counselling, receive "an apology for their experience", and tell the Ministry of Social Development what happened to them.<sup>64</sup>
40. According to the Crown Response Unit, more than 80 percent of survivors who have been offered a rapid payment have chosen this option.<sup>65</sup> The Ministry of Social Development advised the Inquiry that survivors had regularly provided positive feedback about the process and the apologies they had received.<sup>66</sup>
41. As a general principle, the Inquiry agrees that the prompt determination of a claim is important. However, speed needs to be balanced with other considerations that affect whether a determination will achieve or contribute to a survivor's claim being resolved. These include matters such as the integrity of the process and the outcome, and its ability to assist in the restoration of mana.

61 Ministry of Social Development, Report to Hon Carmel Sepuloni, Approval for MSD Historic Claims Rapid Payment Approach (22 September 2022, para 20).

62 Ministry of Social Development, MSD Historic Claims Business Process and Guidance (updated May 2023, page 35 and footnote 14).

63 Ministry of Social Development, Rapid payments fact sheet (October 2022).

64 Ministry of Social Development, Rapid payments fact sheet (October 2022).

65 Crown response to the Abuse in Care Inquiry, Pānui (February 2023).

66 Ministry of Social Development, Letter re: Ministry of Social Development response to Cooper Legal updating witness statement, (8 March 2023, para 16).

42. The Inquiry has the following concerns about the Ministry of Social Development's rapid payment scheme:
- The Inquiry intended that advance payments would be available to all survivors who met the criteria proposed by the Inquiry, as they were under the Scotland Advance Payment scheme.<sup>67</sup> This is based on the principle that entitlements for survivors abused in care should not depend on the institution they were in when they were abused. Contrary to this, survivors who have claims with any institution other than the Ministry of Social Development, including faith-based institutions, do not have access to the rapid payment scheme (and as set out below, some survivors who have claims with the Ministry of Education have access to a different rapid payment scheme). Given the Government understood that many other institutions have only a limited number of claims, advance payments could have been made available on a universal basis as the Inquiry proposed.
  - In He Purapura Ora, he Māra Tipu, the Inquiry found that a key component of puretumu is a meaningful apology. Apologies that failed to squarely acknowledge the relevant abuse were meaningless. While the Inquiry understands that some survivors have been positive about the apologies received from the Ministry of Social Development as part of receiving a rapid payment, no determination is made in the rapid payment process about whether MSD accepts the survivor's claims about that abuse. The actual abuse suffered by the survivor is irrelevant or mostly irrelevant to the amount received as a rapid payment. It is difficult for the Inquiry to see how MSD can offer meaningful apologies to survivors for abuse if it has not accepted that the abuse occurred
  - The Inquiry also understands that the Ministry of Social Development advised Cooper Legal that survivors would be allowed to determine the content of its apology letters to them following a rapid payment.<sup>68</sup> This is the case even though MSD will not have accepted that the abuse occurred, nor taken this into account when setting the payment amount. It is the Inquiry's view that such an apology lacks integrity.
  - For many survivors it is essential that their claims of abuse are believed. It will be difficult for the Ministry of Social Development to tell survivors that it believes their claims of abuse, if it does not take the abuse into consideration when deciding whether a survivor should receive a rapid payment, or how much they receive.

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67 National Records of Scotland, Financial redress for survivors of child abuse in care: Advance Payment Scheme form and guidance (8 December 2021).

68 Updated witness statement of Cooper Legal relating to redress for historic abuse in state and faith-based care between 1950 and 2000 (Royal Commission of Inquiry into Abuse in Care, 9 December 2022, para 161).

- > The Ministry of Social Development chose time spent in care as the main criterion for determining the amount of a rapid payment. This was based on its view that a survivor who had spent more time in care would be more likely to have suffered repeated harm. However, there is a risk that survivors who have spent a long time in care and experienced lower-level abuse will receive more (even substantially) than survivors who have spent a short time in care yet suffered higher-level abuse (such as multiple rapes). A survivor who experienced this type of abuse could choose an individualised assessment, but that would likely take years under MSD's timeframes.<sup>69</sup> Once a claim makes its way through the backlog for assessment, MSD told the Inquiry that some claims can take as little as 3–6 months to resolve. Survivors may feel aggrieved about the amount they have received as a rapid payment if they become aware of amounts received by other survivors who have suffered what they perceive to be lesser abuse. This may lead to adverse perceptions about the integrity of the scheme by survivors and the public.
- > The rapid payment scheme has many similarities with a previous fast-track process by the Ministry of Social Development. He Purapura Ora, he Māra Tipu records survivors accepting fast-track offers because they were struggling financially and did not want to wait years for a fuller assessment,<sup>70</sup> and testimonies from survivors who criticised this process.<sup>71</sup> It appears that little or no weight has been given to these critiques in designing the rapid payment scheme.
- > A survivor who accepts a rapid payment from the Ministry of Social Development has to sign an agreement settling their claims against MSD. The Inquiry did not envisage that advance payments would be offered in settlement of a survivor's claim but as an interim measure for seriously ill or elderly survivors. The Inquiry also recommended that whānau should be able to make a claim on a deceased survivor's behalf to the new puretumu torowhānui scheme, if there is clear evidence that the survivor had intended to apply to the scheme or had taken other steps to make a claim.<sup>72</sup>
- > It is unclear whether survivors who accept a rapid payment will have access to any new scheme. The Inquiry understands that the Ministry of Social Development's settlement agreement states that the survivor will have access to any new redress scheme established, provided that the Government decides to make the new scheme available to survivors who have already settled. MSD advises survivors that the Government has not made "final decisions" on this.<sup>73</sup>

69 Ministry of Social Development, Rapid payments fact sheet (October 2022). This was first published in October 2022 but remains available on the Ministry's website. It advises that there is a large backlog of claims and current wait-times are over four years.

70 See Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 145–146).

71 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 94, 153, and 160).

72 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 281).

73 Ministry of Social Development, Rapid payments fact sheet (October 2022).

43. The Inquiry is also aware that the Ministry of Social Development is endeavouring to settle claims from a group of survivors made under the Privacy Act 2020 relating to MSD's alleged failure to provide their records in a timely manner. For the purposes of settling these claims, MSD has agreed that records should have been provided within four months from the date of request. Survivors from this group whose record requests took longer than that to be processed have received settlement offers based on a banding approach. Under that approach, MSD has offered to pay the following sums:<sup>74</sup>
- > \$5,000 for a delay of 0 to 3 months (that is, 0–3 months in excess of the four-month timeframe considered reasonable)
  - > \$7,000 for a delay of 3 to 5 months
  - > \$9,000 for a delay of 5 to 8 months
  - > \$11,000 for a delay of 8 to 11 months
  - > \$13,000 for a delay of 11 to 14 months
  - > \$15,000 for a delay of 14 to 17 months
  - > \$17,000 for a delay of 17 months or more.
44. The Inquiry does not criticise the Ministry of Social Development for offering these sums in settlement of these privacy claims. The sums are presumably based, in part at least, on what MSD could expect to pay if the claims proceeded to the Human Rights Review Tribunal and damages were awarded against the ministry. However, the Inquiry is very concerned that a survivor from this group could receive more from MSD (or not much less) for a delay in providing records than the survivor could receive as a rapid payment in return for settling the survivor's abuse claims against the ministry. Such an outcome seems neither logical nor fair.<sup>75</sup>
45. Also, as set out above the highest sum offered in settlement for these privacy claims is \$17,000. In He Purapura Ora, he Māra Tipu, the Inquiry found that the Ministry of Social Development's average redress payment for abuse in care was \$20,000 (that is, the average payment following an individualised assessment).<sup>76</sup>

<sup>74</sup> Email from Cooper Legal to the Royal Commission of Inquiry into Abuse in Care (23 April 2024).

<sup>75</sup> The Inquiry has already commented on this issue in Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui, Volume 1 (2021, page 160). Referring to the payments available in State agency redress schemes, the Inquiry stated: "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."

<sup>76</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui, Volume 1 (2021, page 305).

## Te kaupapa utu tere a Te Tāhūhū o te Mātauranga Ministry of Education's rapid payment scheme

46. In May 2024 the Ministry of Education introduced a rapid payment scheme (only) for survivors of Waimokoia Residential School. This scheme does not test a survivor's particular claims.<sup>77</sup> Instead, the payments available are based on what the ministry refers to as "standard findings" it has made about abuse at Waimokoia between 1960-1969, 1970-1979, 1980-1989, 1990-1999, and 2000-2009. The maximum sum available in the ministry's rapid payment scheme for any Waimokoia survivor is \$20,000.
47. For example, a survivor who attended Waimokoia in the 1960s and was abused and suffered harm as a result will receive \$5,000. This sum is based on the Ministry of Education's standard findings relating to supervision and inappropriate use of time out during the 1960s. If the survivor attended between December 1960 and January 1961, they will receive an additional \$10,000 based on other standard findings. These include a finding of sexual abuse by a handyman employed at Waimokoia between December 1960 and 16 January 1961 (although the description of this finding makes it unclear whether the ministry actually reached the view that sexual abuse occurred).
48. A survivor who attended Waimokoia during the 2000s will receive \$20,000, comprised of \$10,000 for "ongoing issues with teaching and learning provision for a significant amount of time and inappropriate behaviour management", and \$10,000 for "ongoing physical and sexual abuse occurring during the 2000s, including between students". The Ministry of Education's standard findings for the 2000s include that during this period Waimokoia "had a 'terrifying and unhealthy' environment for students, inappropriate use of timeout, practice failures and known and potentially abusive staff present throughout".<sup>78</sup>
49. A settlement offer under the Ministry of Education's rapid payment scheme also includes an apology from the Secretary of Education and an offer to pay the survivor's actual and reasonable legal costs. If the survivor chooses to accept an offer, they also agree that the settlement fully resolves their claims in relation to Waimokoia. The exception to this is that the survivor may still access any new redress scheme established by the Government, provided the Government chooses to make that scheme available to survivors who have previously settled their claims.<sup>79</sup>

<sup>77</sup> Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 24).

<sup>78</sup> Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, Annex 1).

<sup>79</sup> Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, paras 34 and 35).

50. A survivor of Waimokoia does not have to choose a rapid payment, and instead may opt for an individualised or ‘full’ assessment of their claims. Unlike the rapid payment scheme, the full assessment may include an interview with an assessor and includes an assessment of the survivor’s particular claims.<sup>80</sup> However, the Ministry of Education states that the full assessment process for a Waimokoia claim takes approximately six months, which can be extended if the claim is complicated or additional research is required. The Inquiry understands that Waimokoia claims may be assessed more quickly than claims in relation to other schools because of the amount of information the ministry already has on Waimokoia. So, if a survivor has a claim relating to another institution for which the Ministry of Education is responsible, the Inquiry understands that the processing time for that claim may be longer than six months. Rapid payments, on the other hand, can be made in approximately four weeks.<sup>81</sup> Also, the rapid payments scheme has been designed so that it produces “broadly consistent” outcomes with the full assessment process. The Ministry of Education states that its own analysis indicates that average payments under the rapid payment scheme are likely to be slightly higher than the average payment of \$16,000 under its full assessment process.<sup>82</sup> Payments made under the full assessment process have been from \$0 to \$45,000 (“for extremely serious abuse by a convicted offender”).<sup>83</sup> Survivors alleging more serious abuse “might choose to have [their] allegations assessed in full under [the Ministry of Education’s] usual process”.<sup>84</sup>
51. The Ministry of Education states that it will monitor its rapid payment scheme to ensure there are no “unintended negative consequences” for survivors.<sup>85</sup> It intends to extend the scheme to survivors of McKenzie Residential School and Campbell Park Residential School once it has made “standard findings” on those schools.<sup>86</sup> Approximately 45 percent of the abuse in care claims made to the Ministry of Education involve Waimokoia, McKenzie and Campbell Park.<sup>87</sup>

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80 Ministry of Education, Rapid payments for claimants who attended Waimokoia / Mt Wellington Residential School (document still in draft form).

81 Ministry of Education, Rapid payments for claimants who attended Waimokoia / Mt Wellington Residential School (draft document).

82 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, paras 10 and 23).

83 Ministry of Education, Rapid payments for claimants who attended Waimokoia / Mt Wellington Residential School (draft document).

84 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, paras 10 and 23).

85 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 12).

86 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 17).

87 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 17).



## **I whakaarotauhia ngā utu whakataunga e Te Tāhūhū o te Mātauranga**

### **Ministry of Education's prioritised settlement payments**

52. The Ministry of Education has also introduced "prioritised settlement payments" of \$10,000 for survivors who have a terminal illness and who are not expected to live more than 12 months, and whose claims have been accepted as eligible for assessment under the ministry's normal process.<sup>88</sup> A survivor who accepts a prioritised settlement payment will have to sign a settlement agreement fully and finally settling their claim.<sup>89</sup> The Ministry of Education decided not to give survivors who receive this type of payment, or their whānau, the option of continuing to a full assessment. According to the ministry, providing that option would prolong the process for survivors and their whānau. Instead, the ministry wished to provide a "simple and fast option for terminally ill claimants to settle their claims before their death".<sup>90</sup>
53. A survivor who attended Waimokoia and is eligible for a rapid payment and for a prioritised settlement payment may choose either payment, but not both. Prioritised settlement payments, which are available for survivors who attended any school for which the ministry is responsible, are generally lower than the rapid payments available for Waimokoia survivors and may also end up being lower than rapid payments for McKenzie and Campbell Park survivors. This is because the ministry does not have the same level of information about these other schools.<sup>91</sup>

## **He ratonga whakahauora hou**

### **New wellbeing support service**

54. A new wellbeing support service will also be introduced for survivors who have claims with the Ministry of Education, and for their whānau. The services available could include tattoo removal, literacy support, childcare or access to education for children, and budget support. Other services could include specialist counselling services, help to rebuild whānau, iwi or hapū connections, rongoā Māori, and job-seeking support. A kaupapa Māori approach is also available. An aim of the new support service is to provide claimants with practical support and help with the aspects of their lives they would like to improve while they are waiting for their claim to be processed.<sup>92</sup>

88 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 27).

89 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 29).

90 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 30).

91 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 31).

92 Ministry of Education, Wellbeing Support Service for sensitive claimants (draft document).

## Ngā tirohanga a te Pakirehua The Inquiry's views

55. The Inquiry welcomes the Ministry of Education's new wellbeing support service. This is a positive initiative and the services provided align in a range of ways with services the Inquiry recommended the new puretumu torowhānui scheme should enable survivors and their whānau to access.<sup>93</sup>
56. The Ministry of Education's prioritised settlement payment is more consistent with the Inquiry's advance payment recommendation than MSD's rapid payment process. It involves the payment of the same sum to each survivor and is only available to survivors who are terminally ill rather than survivors generally. However, it is not available to survivors whose age gives rise to a serious risk that they will not be alive to see the outcome of their claim. The Ministry of Education states that it has a process by which the claims of elderly survivors are prioritised.<sup>94</sup> The Inquiry is not aware how long processing times are under this process. Its view remains that advance payments as it recommended should have been made available on a universal basis to survivors who met the criteria it proposed. This was the approach taken in Scotland, where advance payments were available to survivors of abuse in care who had a terminal illness or who were aged 68 or over (with the original age of 70 years or over being reduced to 68 after a review).<sup>95</sup>
57. The requirement that survivors who receive a prioritised settlement payment fully and finally settle their claim is not consistent with the advance payments the Inquiry recommended. While the Ministry of Education's view is that giving the option of progressing to a full assessment would prolong the process for survivors and their whānau, the Inquiry considers that is a choice the ministry should have left to those people.
58. Further, the wellbeing support service and the prioritised settlement payments are only available to survivors who have claims with the Ministry of Education. As the Inquiry has said before, the services and other forms of redress available for a survivor of abuse in care should not depend on the institution the survivor was in when they were abused.

93 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 304–304).


94 Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 28).

95 National Records of Scotland, Financial redress for survivors of child abuse in care: Advance Payment Scheme form and guidance (8 December 2021). See also the advance payments available under section 56B of the Australian National Redress Scheme for Institutional Child Sexual Abuse Act 2018, including for an applicant aged 70 or over and for an applicant aged 55 or over who is an Aboriginal person or Torres Strait Islander.

59. The Inquiry has a series of concerns about the Ministry of Education's rapid payment scheme for people who attended Waimokoia Residential School. In He Purapura Ora, he Māra Tipu, the Inquiry found that there was no principled basis for the payments provided by State redress schemes, including that of the Ministry of Education, and that the amounts set were arbitrary.<sup>96</sup> The Inquiry also found that redress payments available from the Ministry of Education were plainly inadequate.<sup>97</sup> The Ministry of Education's rapid payment scheme provides another example of the same, serious problems.
60. The Inquiry can see no principled basis for the amounts available in the rapid payment scheme, particularly given the Ministry of Education's extensive knowledge of what occurred at Waimokoia. This includes the ministry's "standard finding" that, for example, in the 2000s the environment at Waimokoia Residential School was terrifying for students, there were known abusers amongst staff, and there were also other potential abusers. A survivor who attended Waimokoia during this period would be eligible for a maximum rapid payment of \$20,000 in return for settling their claim. As set out above, this is only \$3,000 more than the sum the Ministry of Social Development is offering to survivors who experienced a delay of 17 months or more in accessing their records. It is also \$10,000 less than the maximum payment available in MSD's rapid payment scheme.
61. A Waimokoia survivor may choose to have a full assessment rather than opting for a rapid payment from the Ministry of Education. But this will take longer, and those survivors living in poverty (as many are) may feel that they cannot wait, particularly when they may do no better financially under a full assessment. And, as set out above, the highest payment the Ministry of Education has made in its full assessment process is \$45,000. This was for, in the ministry's words, "extremely serious abuse by a convicted offender". In the Inquiry's view, if that was the only sum the survivor of such horrific abuse received, whether from the Ministry of Education, the Accident Compensation Corporation or any other source, that is a disgrace.

96 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 159–160).

97 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 305–306).

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62. The Inquiry is also concerned by the Ministry of Education establishing processes that are different to the Ministry of Social Development's processes (including in relation to eligibility, the basis on which payments are made, and the amounts available). This will increase complexity for survivors, particularly if they have claims with both ministries. In He Purapura Ora, he Māra Tipu, the Inquiry found that the Ministry of Social Development, Ministry of Education, Ministry of Health and Oranga Tamariki had not provided fair and consistent redress for abuse in care.<sup>98</sup> Rather than addressing the issues that led to this finding, the creation of two new processes by the Ministry of Education and the differing Ministry of Social Development rapid payment process is likely to exacerbate these issues. Such problems could have been avoided, and the benefits of an advance payment for seriously ill or elderly survivors maintained, if the Government had followed the Inquiry's recommendation for an advance payment.
63. Also, the Ministry of Education stated that its main aim in introducing rapid payments was to address delay in its full assessment process, and issues relating to the level of evidence it required.<sup>99</sup> The Inquiry's view is that the Government could have accelerated the Ministry of Education's and the Ministry of Social Development's normal claim processes for other survivors in ways that supported (rather than worked against) the principles and values in He Purapura Ora, he Māra Tipu.

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<sup>98</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 164).

<sup>99</sup> Ministry of Education website, Rapid Payment Policy for sensitive claims (undated, para 5).

## Te whakatau take me te tiaki mōtika ki te whaiture Resolving claims and preserving rights to litigate

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64. The Inquiry recommended that the Government and other institutions use best endeavours to resolve claims before the establishment of the puretumu torowhānui scheme. The Inquiry also said that the Government and other institutions should offer settlements that do not prejudice survivors' rights under the new scheme or under any legislation enacted in response to the Inquiry's civil litigation recommendations.<sup>100</sup>
65. Cooper Legal told the Inquiry that since He Purapura Ora, he Māra Tipu, Government and most faith-based institutions' settlements allow survivors access to the puretumu torowhānui scheme (or alternative scheme that might be set up by the Government).<sup>101</sup> However, the Government has not made final decisions on the scope of any new scheme, including whether survivors who have previously accepted a settlement will be able to access it. The Inquiry also understands that settlement agreements do not generally include similar exceptions in relation to the civil litigation reform that the Inquiry recommended.
66. Cooper Legal also advised the Inquiry that following He Purapura Ora, he Māra Tipu it has seen an increase in the financial value of settlements offered by some faith-based institutions and other improvements to faith-based redress processes.<sup>102</sup>

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100 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 347).

101 Updated witness statement of Cooper Legal relating to redress for historic abuse in state and faith-based care between 1950 and 2000 (Royal Commission of Inquiry into Abuse in Care, 9 December 2022, para 5 (with the exception stated to be Presbyterian Support Northern), and for example paras 50, 437 and 438).

102 Updated witness statement of Cooper Legal relating to redress for historic abuse in state and faith-based care between 1950 and 2000 (Royal Commission of Inquiry into Abuse in Care, 9 December 2022, paras 8, 17, and 32).

## **Te whakarite me te whakauru i tētahi rautaki whakawhanake ohu mahi**

### **Developing and implementing a transformative workforce strategy**

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67. The Inquiry recommended that the Government has a transformative workforce strategy, as well as resourcing training and workforce skill development, to ensure that trained workforces are available to provide *oranga* (wellbeing) services to survivors.<sup>103</sup>
68. The Crown Response Unit advised that Te Kawa Mataaho – the Public Service Commission 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”.<sup>104</sup> It is not clear what that work is, or if it is relevant to the Inquiry’s recommendations.
69. Similarly, the Inquiry’s recommendation that the Government immediately begin a stocktake of available *oranga* (welfare) services has not been followed.<sup>105</sup> The Inquiry also recommended that the Māori collective and the *purapura ora* collective commission an expert review to evaluate the stocktake and make recommendations on any changes or extra services needed.<sup>106</sup> This has not been done.

103 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui, Volume 1 (2021, page 325).

104 Letter from Crown Response to the Abuse in Care Inquiry (Royal Commission of Inquiry into Abuse in Care, 8 March 2023).

105 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui, Volume 1 (2021, page 327).

106 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui, Volume 1 (2021, page 327).

## **Te whakamana i ngā purapura ora mā ngā whakamaharatanga, ngā hui whakanui, ngā kaupapa mahi, ngā whakahau aroā me te rangahau**

### **Publicly acknowledging survivors through memorials, ceremonies and projects, awareness campaigns and research**

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70. The Inquiry recommended that the Government consider funding memorials for survivors and removing memorials to abusers.<sup>107</sup> It also recommended that Government, indirect state care providers and faith-based institutions consider funding ceremonies (including citizenship ceremonies) and projects that remember survivors. It recommended that the Government consider funding a national project to investigate potential unmarked graves and urupā or graves at psychiatric hospitals and psychopaedic settings,<sup>108</sup> and that the Government take active steps to raise awareness about abuse in care.<sup>109</sup> A further recommendation was that the Government provide ongoing funding for Aotearoa New Zealand-specific research on the causes and effects of abuse in care, and social campaigns aimed at eliminating abuse.<sup>110</sup>
71. Cabinet considered in December 2022 a limited number of national and/or local memorials, a public archive of survivor stories, research funding, and scholarships for survivors and their whānau.<sup>111</sup> Indicative costings for these proposals were provided.<sup>112</sup> The Government also attempted to purchase the Lake Alice Hospital water tower, with the aim of turning it or the site into a memorial to survivors of the Lake Alice Hospital Child and Adolescent Unit. The Government made two offers to the landowners, but neither was accepted.<sup>113</sup>
72. The Inquiry is unaware of any other steps having been taken or decisions made on these proposals. It is also unaware of any work on the ceremonies or the national project to investigate potential unmarked graves and urupā.

107 Royal Commission of Inquiry into Abuse in Care, *He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui*, Volume 1 (2021, page 330).

108 Royal Commission of Inquiry into Abuse in Care, *He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui*, Volume 1 (2021, page 330).

109 Royal Commission of Inquiry into Abuse in Care, *He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui*, Volume 1 (2021, page 330).

110 Royal Commission of Inquiry into Abuse in Care, *He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui*, Volume 1 (2021, page 330).

111 Cabinet Social Wellbeing Committee, *Responding to the Royal Commission into Historical Abuse in Care's redress findings – Report back on immediate projects to improve survivors' experience of seeking redress* (14 December 2022, pages 16–17, paras 100–104).

112 Cabinet Social Wellbeing Committee, *Responding to the Royal Commission into Historical Abuse in Care's redress findings – Report back on immediate projects to improve survivors' experience of seeking redress* (14 December 2022, pages 16–17, para 103).

113 Williams, F, "Lake Alice Hospital water tower going back on the market after owners reject government offer to turn it into memorial," *Whanganui Chronicle* (11 October 2023).

73. In early 2023 the Ministry of Social Development published research on factors that influence male abuse survivors in reporting abuse and accessing support services.<sup>114</sup> The report found that survivors may take a long time to report abuse and seek help. Barriers faced by male survivors include misconceptions (such as that sexual violence does not happen to men) and limited availability or quality of social support. To encourage men to seek assistance, services must be visible, affordable and designed for males. The report's recommendations include training for service workers and "gender- inclusive education campaigns to enable and encourage men to reach out for help".<sup>115</sup> This research reinforces the Inquiry's recommendations in He Purapura Ora, he Māra Tipu.

### **Te panoni i ngā ingoa wāhi**

#### **Place name changes**

74. On 1 January 2023, Dunedin's Kavanagh College was renamed Trinity Catholic College in response to an independent investigation requested by the Catholic Church's National Office for Professional Standards. The investigation found that the former bishop of Dunedin, John Kavanagh, failed to take suitable action on a complaint of sexual abuse by Father Freek Schokker, and that he took appropriate action for the time in respect of a complaint against Father Magnus Murray while Father Murray was in office for 28 years (from 1957 until his death in 1985).<sup>116</sup> Father Murray was convicted of historical sexual offences against four boys in 2003, but was not laicised (stripped of his clerical status) by the Vatican until 2019. The Catholic Church has also requested that its organisations audit any names used for buildings, prizes and portraits.<sup>117</sup>
75. In Christchurch in early 2024, the Waihoru Spreydon-Cashmere-Heathcote Community Board agreed to change the names of Marylands Reserve and Marylands Place to Validation Reserve and Validation Place. Both are located in Middleton, on one of the two former sites of Marylands School. The Inquiry's report *Stolen Lives, Marked Souls* exposes the extensive and extreme abuse and neglect of tamariki that occurred at this school. The new names were proposed by Marylands survivors, following a process of consultation.<sup>118</sup>
76. The Inquiry is not aware of central Government having taken any similar steps.

114 Ministry of Social Development, *Male survivors of sexual violence and abuse (SVA): Barriers and facilitators to reporting and accessing services* (Te Herenga Waka – Victoria University of Wellington, the University of Otago, and the Donald Beasley Institute, February 2023).

115 Ministry of Social Development, *Male survivors of sexual violence and abuse (SVA): Barriers and facilitators to reporting and accessing services* (Te Herenga Waka – Victoria University of Wellington, the University of Otago, and the Donald Beasley Institute, February 2023).

116 Hudson, D, "Dunedin school Kavanagh College to be renamed after sexual abuse investigation," *Otago Daily Times* (19 March 2022), <https://www.odt.co.nz/news/dunedin/kavanagh-college-be-renamed-0>.

117 "NZ Catholic Church to purge abusers' names from titles," *RNZ News* (10 January 2023), <https://www.rnz.co.nz/news/national/482185/nz-catholic-church-to-purge-abusers-names-from-titles>.

118 New names floated for street and park on site of historic abuses," *RNZ News* (7 April 2024), <https://www.rnz.co.nz/news/national/513667/new-names-floated-for-street-and-park-on-site-of-historic-abuses> and Gill, S, "Survivors of abuse in care celebrate 'validating' name change," *The Press* (15 April 2024), <https://www.thepress.co.nz/nz-news/350245091/survivors-abuse-care-celebrate-validating-name-change>.



# Te whakahoutanga whaiture raraupori, te arotake o Te Aka Matua o Te Ture me te whai wāhi o Mahi Haumarua Aoteroa

## Civil litigation reform, Law Commission review and role for WorkSafe

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77. In He Purapura Ora, he Māra Tipu, the Inquiry recommended a new right to be free from abuse in care, a related duty to protect that right, an exception to the accident compensation bar (so that survivors of abuse in care can seek compensation in the courts by taking civil cases), and the removal of limitation periods for abuse in care cases. The Inquiry recommended that the Government direct the Law Commission to review a range of obstacles for survivors taking civil cases and to recommend any corrective steps by 1 December 2022. In addition, the Inquiry recommended that WorkSafe include abuse in care in its focus areas.<sup>119</sup>
78. The Inquiry proposed two other options if the Government decided not to proceed with the Inquiry's civil litigation recommendations. One option was to empower the puretumu torowhānui scheme to award compensation. The other was to reform the accident compensation scheme so that it covers the same abuse as that covered by the new puretumu torowhānui scheme and provides fair compensation and other remedy options for that abuse.
79. The Inquiry also recommended that the Minister for the Public Service make public the Government's initial response to the recommendations of the Inquiry, and its likely timetable by 15 April 2022,<sup>120</sup> and to include dates to enact the recommended civil litigation reform.<sup>121</sup>

<sup>119</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 330).

<sup>120</sup> That is, within four months of He Purapura Ora being tabled in the House of Representatives on 15 December 2021.

<sup>121</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 349).

## Ngā take mō ngā tūtohu a te Kōmihana

### The reasons for the Inquiry's recommendations

80. The accident compensation scheme is intended to provide survivors with "fair compensation",<sup>122</sup> rehabilitation and other assistance. However, the Inquiry found that many survivors receive little to no financial compensation from the scheme.<sup>123</sup> For that, and other reasons, the Inquiry considered survivors should be able to seek a public decision from the courts and to have their claim for compensation assessed. Survivors in other countries including Australia have these rights, as well as access to out-of-court redress schemes.
81. The Inquiry considered that court action by survivors has the potential to promote public accountability, reduce impunity, prevent abuse, and change institutional behaviour. The current system achieves little by way of public accountability, particularly in relation to institutional accountability. The loss caused by abuse in care is largely borne by survivors themselves, their families or the taxpayer. The accident compensation bar may shield an institution from public assessment of its conduct or financial liability.
82. While criminal proceedings can provide accountability, survivors depend on the State to initiate prosecution. Also, while criminal prosecutions are more likely to be directed against individuals, survivors could take civil cases against both alleged abusers and institutions under the Inquiry's proposed reforms.

<sup>122</sup> Section 3(d) of the Accident Compensation Act 2001 states: "The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs) ... (d) ensuring that, during their rehabilitation, claimants receive fair compensation for loss from injury, including fair determination of weekly compensation and, where appropriate, lump sums for permanent impairment."

<sup>123</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 331).


## Te urupare a te Kāwanatanga The Government's response

83. Two and a half years have passed since He Purapura Ora, he Māra Tipu was tabled in the House of Representatives. The Government has not provided a timetable to enact the recommended civil litigation reform. There has been no referral to the Law Commission or any relevant change to WorkSafe's focus areas.
84. In July 2022, the then Minister for the Public Service advised Cabinet that the Ministry of Justice was continuing to review the Limitation Act 2010 in relation to historic claims of abuse in care, drawing on the findings in He Purapura Ora, he Māra Tipu. The Minister proposed that the terms of a potential broader civil litigation policy project be examined after the high-level design of the new redress system was complete. It was also proposed that the Inquiry's recommendations on the right to be free from abuse in care and WorkSafe's focus areas be considered after the Inquiry had issued all its findings and recommendations on improvements to the care system, monitoring and accountability. Taking this course would allow for the comprehensive consideration of how care should be regulated.<sup>124</sup> These matters were noted by Cabinet in July 2022.<sup>125</sup>
85. In January 2024 the Inquiry was advised that, following a joint briefing dated 18 May 2023 to the Minister of Justice and the Minister for ACC, the then Ministers agreed to defer work on the Inquiry's recommendations regarding limitation periods and other civil litigation obstacles for survivors of abuse until after the Inquiry had provided its final report. This would allow all redress-related recommendations to be considered together, along with a more developed puretumu torowhānui scheme. It was stated that this approach would ensure a coherent and workable redress system.<sup>126</sup>

<sup>124</sup> New Zealand Government Cabinet paper, Responding to the Royal Commission into Historical Abuse in Care's redress findings (2022, paras 73–76).

<sup>125</sup> Cabinet Business Committee Minute of Decision CBC-22-MIN-0035 (4 July 2022).

<sup>126</sup> Crown Natural Justice response to Part 9 (12 January 2024).

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86. The Inquiry is concerned with the approach the Government has taken to these recommendations. In August 2021, the Inquiry's terms of reference were amended – the Inquiry had to provide recommendations on redress processes to the Minister of Internal Affairs by 1 October 2021 and a redress report to the Minister by 1 December 2021.<sup>127</sup> The then Minister of Internal Affairs stated that the reason for bringing the due date forward for the Inquiry's redress report was “so Government can move more quickly to make improvements”. The Minister also said that the Government was keen to progress redress for survivors: “Bringing forward the report date for redress will allow this Government to make meaningful progress for survivors.”<sup>128</sup>
87. Consequently, the Inquiry provided He Purapura Ora, he Māra Tipu to the Minister on 1 December 2021. In its report the Inquiry referred to its work as ongoing, but that the “work of establishing a new and more effective puretumu torowhānui system and scheme cannot begin a moment too soon”.<sup>129</sup> The Government has not taken that approach: it has deferred work in relation to the Inquiry's recommendations regarding the right to be free from abuse in care; other civil litigation recommendations; the Law Commission referral; and WorkSafe. There is no reason why substantial work could not have progressed while also deferring final decision-making on some matters until the Government had received the Inquiry's final report.

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127 Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018 as at 5 August 2021, clauses 37A–37C.

128 Media release, Department of Internal Affairs, Royal Commission into Historical Abuse scope adjusted to avoid timeline delay (23 April 2021).

129 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 350).

## Ngā tūtohu a Te Tāhū o te Ture e pā ana ki te whakahoutanga whāiti Ministry of Justice advice about limitation reform

88. On 3 November 2022, the Secretary for Justice, Andrew Kibblewhite, wrote to Iona Holsted in her capacity as the Chair, Chief Executives Sponsoring Group of the Crown Response Unit. In his letter, Mr Kibblewhite advised that Ministry of Justice officials had concluded that unless the accident compensation scheme is reformed (as recommended by the Inquiry in He Purapura Ora, he Māra Tipu), the Inquiry's recommended limitation reform on its own would likely have only a minimal impact on the ability of survivors to bring successful civil litigation cases.<sup>130</sup>
89. There should be a right to be free from abuse in care and an exception to the accident compensation scheme bar for civil claims for abuse in care. The Inquiry does not however agree with the Ministry of Justice's view that, without such reform, there is no point in enacting the limitation reforms recommended by the Inquiry as it would have limited impact. A principal reason for this is that the accident compensation scheme bar limits but does not prevent the courts from awarding compensation under the New Zealand Bill of Rights Act 1990. In addition, the accident compensation scheme bar does not prevent claims for exemplary damages. New Zealand Bill of Rights claims for abuse in care and claims for exemplary damages may, however, be prevented by limitation periods.<sup>131</sup> The Inquiry considers that although reforming the country's limitation law in accordance with its recommendations would be insufficient on its own, it is an important step in promoting the rights of survivors to an effective remedy, promoting accountability, and better aligning Aotearoa New Zealand's law with countries it often compares itself with and with its international obligations.

<sup>130</sup> Ministry of Justice, Letter from Andrew Kibblewhite, Secretary for Justice to Iona Holsted, Secretary for Education (3 November 2022).

<sup>131</sup> Butler, A & Butler, P, *New Zealand Bill of Rights Act: A Commentary* (2nd edition), (LexisNexis, 2015, pages 1532, 1581–1583). See also Todd, S, Hawes, C, Atkin, A, Cheer, U & Isac, A, *Todd on Torts*, online version (9th edition), (Thomson Reuters, 2023, paras 59.25.5.2, 59.25.5.2(8)(a), 59.25.5.2(9) and 59.25.5.3(2)(a)).

90. In that regard, UN human rights committees consider that where torture or cruel, inhuman or degrading treatment or punishment has occurred, complete legal immunities from civil liability are impermissible.<sup>132</sup>

The United Nations Committee against Torture has said:

*“On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those whom [sic] have not received redress. States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress.”<sup>133</sup>*

## **Te utu paremata aituā me te matea whai hua kia tika Accident compensation and the need for an effective remedy**

### **Te wānanga i te utu paremata aituā Wānanga on accident compensation**

91. On 9 February 2023, the Inquiry held a wānanga about accident compensation with representatives from the Accident Compensation Corporation, the Ministry of Business, Innovation and Employment (MBIE, responsible for policy advice to the Minister for ACC), and other Government agencies. At the wānanga, the Inquiry asked whether it was accepted that there is no adequate compensation process for survivors of abuse in care through the accident compensation scheme.<sup>134</sup> The Inquiry also referred to high levels of compensation being obtained by survivors overseas. The Inquiry asked if MBIE compares what is available under the accident compensation scheme with what may be available overseas, including through court cases, when advising Government on what might amount to fair compensation for a particular type of injury.<sup>135</sup>

<sup>132</sup> UN 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, para 18); UN Human Rights Committee, CCPR General Comment No 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), (10 March 1992, para 15); Shelton, D, Remedies in international human rights law (3rd edition), (Oxford University Press, 2015, page 97); UN Committee Against Torture, General comment No 3, 2012 : Convention against torture and other cruel, inhuman or degrading treatment or punishment: Implementation of article 14 by States parties (13 December 2012, pages 40–41).

<sup>133</sup> UN Committee Against Torture, No 3, 2012: Convention against torture and other cruel, inhuman or degrading treatment or punishment: Implementation of article 14 by States parties (13 December 2012, para 40).

<sup>134</sup> Royal Commission of Inquiry into Abuse in Care, Summary of wānanga on ACC (9 February 2023, para 36).

<sup>135</sup> Royal Commission of Inquiry into Abuse in Care, Summary of wānanga on ACC (9 February 2023, para 37).

92. MBIE stated that “at the centre of the [accident compensation] scheme is the social contract by which ACC provides no fault compensation in exchange for the removal of the right to sue for compensatory damages due to injury”.<sup>136</sup> MBIE stated that it monitors overseas developments and that the accident compensation scheme’s entitlements are more generous than many others.<sup>137</sup> MBIE recognised that it is through court action that people can access some of the greater remedies being seen overseas. Its view was that it is difficult to compare the accident compensation scheme’s entitlements with what could be obtained by court action overseas, and that this is because court action is highly unpredictable, varied, and costly. It stated that accident compensation scheme cover and entitlements are more certain and prescribed.
93. MBIE told the Inquiry that when decisions have previously been made that a particular group requires different compensation or other support than what is available in the accident compensation scheme, a bespoke scheme has been established for that group instead of changes being made to the accident compensation scheme. MBIE referred to the compensation and other support available for veterans under the Veterans’ Support Act 2014 as an example of this.<sup>138</sup> The Inquiry asked whether MBIE had considered a bespoke, compensatory scheme for survivors of abuse in care. MBIE replied that it had not provided advice to the Government on this, but it was an option for any Government to consider.<sup>139</sup>
94. The Inquiry also noted the absence of a clause in the accident compensation scheme’s legislation clearly setting out the roles and responsibilities of the Accident Compensation Corporation under te Tiriti o Waitangi. MBIE advised that while it has not done any work on including such a clause, a minister could decide this work should be done as part of their policy work programme. The Accident Compensation Corporation advised that its statement of intent refers to the Crown being a te Tiriti o Waitangi partner, and that it will support the Crown in this in the way it operates. The Accident Compensation Corporation also advised that its legislation requires it to comply with its statement of intent, and that effectively it is operating as if there were a te Tiriti o Waitangi clause in its legislation.<sup>140</sup>

<sup>136</sup> Royal Commission of Inquiry into Abuse in Care, Summary of wānanga on ACC (9 February 2023, para 5).

<sup>137</sup> MBIE advised that between 2016 and 2021, 18.7 percent of claimants with accepted sensitive claims received an independence allowance. During the same period 8 percent of claimants with accepted claims received a lump sum payment. MBIE referred to these independence allowance and lump sum payment figures as higher than those cited in He Purapura Ora at page 238, noting that the former relate to accepted claims only. In contrast, the figures in He Purapura Ora are for claims lodged. MBIE confirmed however that these figures are not for the same time period as the figures provided by ACC (2010–2020) and cited in He Purapura Ora. MBIE also did not have any new weekly compensation figures. See also Royal Commission of Inquiry into Abuse in Care, Summary of Wānanga on ACC (9 February 2023, paras 34–35).

<sup>138</sup> Royal Commission of Inquiry into Abuse in Care, Summary of wānanga on ACC (9 February 2023, para 7).

<sup>139</sup> Royal Commission of Inquiry into Abuse in Care, Summary of wānanga on ACC (9 February 2023, para 39).

<sup>140</sup> Royal Commission of Inquiry into Abuse in Care, Summary of wānanga on ACC (9 February 2023, paras 18–20).

## He nui ngā utu me ngā tatūnga i Ahitereiria, me te ngoikoretanga o ngā mōtika me ngā tutukinga i Aotearoa

### High awards and settlements in Australia, and limited rights and prospects in Aotearoa New Zealand

95. In Australia, the implementation of civil litigation reforms recommended by the Australian Royal Commission into Institutional Responses to Child Sex Abuse has caused an uplift in the number of civil claims being brought by survivors<sup>141</sup> and the amount of compensation received.
96. For example, in 2023 Australian juries awarded abuse survivors compensation of AU\$5.9 million<sup>142</sup> and AU\$3.3 million.<sup>143</sup> In 2021 and in 2022, Australian courts ordered that abuse survivors be paid awards of AU\$2,632,319 (NZ\$2,823,328),<sup>144</sup> AU\$1,498,122 (NZ\$1,606,747)<sup>145</sup> and AU\$1,908,647 (NZ\$2,046,957).<sup>146</sup> The Inquiry is aware of 16 other Australian cases since 2017 in which Australian courts ordered payments ranging from AU\$230,000 (NZ\$247,612) to over AU\$3.5 million (NZ\$3,768,083) to survivors of abuse. The majority of the awards were more than AU\$800,000 (\$NZ861,222).<sup>147</sup> The types of loss for which compensation was awarded include pain and suffering, loss of past and future earnings, superannuation contributions, past and future medical expenses, and travel costs. Interest was added to the compensation awarded.
97. It is the case that some defendants will not be able to pay an award of compensation, and so a survivor who brings a successful case in Australia may still not receive compensation.<sup>148</sup> Further, a survivor who brings a case in Australia may not succeed if the case goes to trial. However, survivors have had very significant successes in court, and many civil cases settle before trial. As appears to be the Australian experience, high compensation awards in some court cases are likely to contribute to higher settlements for other survivors.<sup>149</sup> That is because the risk for defendants is increased.

141 Finity Consulting, NGO Insurance for PSA Claims: Phase 1 Final Report (NSW Department of Communities and Justice, September 2022, pages 15–18).

142 Silva, K, "AFL club Western Bulldogs ordered to pay \$5.9m to child sexual abuse victim Adam Kneale," ABC News (9 November 2023).

143 Burke, C, "Multi-million Catholic Church payout 'massively important' for future sexual abuse cases," ABC News (19 November 2023).

144 PCB v Geelong College, Victoria Supreme Court [2021] VSC 633.

145 Province Leader of the Oceania Province of the Congregation of the Christian Brothers v Lawrence [2021] WASCA 77.

146 O'Connor v Comensoli [2022] VSC 313 (with a payment of AU\$131,353 received from the Melbourne Response deducted from the original, higher award). Leave to appeal this judgment was declined: Comensoli v O'Connor [2023] VSCA 131; In a 2019 case in the United Kingdom brought by a survivor, FZO v Adams [2019] EWHC 1286 (QB) the total damages award was UK£1,112,390.70 (NZ\$2,301,926).

147 Van Haren v Van Ryn [2023] NSWSC 776 (AU \$1,416,829.85 awarded); SR v Trustees of the De La Salle Brothers [2023] NSWSC 66 (AU\$1,330,304.60 awarded); Bird v DP [2023] VSCA 66 (upholding an award of AU\$230,000); Mirosevich v Laughlan [2022] NSWSC 1103 (AU\$820,640 awarded); ND v AB (No 3) [2022] ACTSC 197 (AU\$762,023 awarded); Haynes by her tutor Karen Lindley v Haynes [2022] NSWSC 581 (AU\$840,000 awarded); PP v DD (No 2) [2021] NSWSC 1312 (AU \$1,273,125 awarded); Lonergan v Trustees of The Sisters of Saint Joseph & Anor [2021] VSC 651 (AU\$650,000 awarded; see also Lonergan v Trustees of The Sisters of Saint Joseph & Anor [2022] VSCA 208); Brockhurst v Rawlings [2021] QSC 217 (AU\$1,456,524.15 awarded); Wilden v Jennings (no 1) [2021] NSWDC 705 (AU\$490,091.05 awarded); Perez v Reynolds & Anor [2020] VSC 537 (AU\$1,552,725 awarded); P v D [2020] NSWSC 224 (AU\$853,550 awarded); Waks v Cyprys & Ors [2020] VSC 44 (AU\$804,170 awarded); S, M v S, RK [2019] SADC 184 (AU\$744,093.84 awarded); MC v Morris [2019] NSWSC 1326 (AU\$3,510,513 awarded); and Hand v Morris & Anor [2017] VSC 437 (AU\$717,000 awarded).

148 Note in this regard Lothberger, L, "Catholic Church-owned insurer says 'high volume' of abuse claims is putting it out of business," ABC News (29 October 2023).

149 See for example Arnold, Thomas & Becker, Institutional abuse client outcomes; Burke, C, "Multi-million Catholic Church payout 'massively important' for future sexual abuse cases," ABC News (19 November 2023).



98. In contrast, there is little scope in Aotearoa New Zealand to bring a case to court for abuse in care outside of the accident compensation scheme.<sup>150</sup> As a result, very few cases have been brought, there are no recent high compensation awards, and the risk for defendants is generally low. These factors impact on the comparatively low amounts offered in settlements.<sup>151</sup>
99. In 2022, the High Court found that people who suffered the effects of a mental injury due to sexual abuse before they turned 18 can apply to the accident compensation scheme for loss of potential earnings, even if they received treatment after turning 18.<sup>152</sup> The High Court outcome mitigates a long-standing issue of survivors who suffered abuse before 18 years of age and who subsequently received treatment having no entitlement to loss of potential earnings. These survivors may also have had no entitlement to weekly compensation because they were not earning when they became incapacitated. The Accident Compensation Corporation appealed the High Court's decision, but the decision was upheld by the Court of Appeal in late December 2023.<sup>153</sup> This outcome seems significant, in that it appears to open up the possibility of loss of potential earnings to a much wider group of survivors. At the time of writing, however, the Inquiry did not have information about the potential number of survivors affected, and it is not clear whether the High Court and Court of Appeal's interpretation of the law may have downsides for different groups of survivors.<sup>154</sup> Also, the amounts payable by the Accident Compensation Corporation for loss of potential earnings are less than the minimum wage.<sup>155</sup>
100. The Inquiry has also considered the point MBIE made about court action being unpredictable and costly. However, as the case above demonstrates, the existence of the accident compensation scheme does not mean that survivors can always avoid going to court. There are many court cases on accident compensation scheme cover and entitlements.

150 See also in this regard, Kilgallon, S, "Not justice": Survivor's advocate slams 'pathetic' settlement offer," Stuff.co.nz (26 February 2024), <https://www.stuff.co.nz/nz-news/350186189/not-justice-survivors-advocate-slams-pathetic-settlement-offer>.


151 See for example the statement of Cooper Legal advising that the amount offered in settlement to survivors in Aotearoa by the Order of St John of God are based in part on an assessment by the Order's Australian law firm of "litigation risk" in this country. Updated witness statement of Cooper Legal relating to redress for historic abuse in state and faith-based care between 1950 and 2000 (Royal Commission of Inquiry into Abuse in Care, 9 December 2022, para 63).

152 TN v ACC [2022] NZHC 1280.

153 ACC v TN [2023] NZCA 664.

154 See in this regard ACC v TN [2023] NZCA 664 (para 138) and Miller, J & Peck, B, Update on issues faced by ACC claimants (John Miller Law, 2022, paras 15 and 16).

155 ACC states "LOPE is paid weekly and is similar to weekly compensation. We can make weekly payments at 80% of the weekly minimum wage," in ACC website, Financial Support (accessed on 4 June 2024), <https://www.findsupport.co.nz/getting-help/types-of-financial-support/>. See also clauses 47(2) and (4), and clause 42(3) of Schedule 1 to the Accident Compensation Act 2001, and Miller, J & Peck, B, Update on issues faced by ACC claimants (John Miller Law, 2022, paras 15 and 16).



## **Te korenga o te whai hua kia tika mō ngā purapura ora i Aotearoa**

### **Lack of an effective remedy for survivors in Aotearoa**

#### **New Zealand**

101. The above reinforces the serious issues presented in He Purapura Ora, he Māra Tipu about whether Aotearoa New Zealand is in breach of its international law obligations to provide survivors with an effective remedy. Despite the gravity of these issues, it remains unclear whether the Government accepts there is a problem in relation to civil litigation settings and the accident compensation scheme. It is concerning that while He Purapura Ora, he Māra Tipu was tabled in December 2021, work to address these issues has continued to be deferred until the Inquiry issues its final report.
102. The Inquiry considers that the accident compensation scheme has generally not provided survivors with adequate compensation. The Inquiry's view is that, together with other relevant matters, the Government should compare what most survivors in Aotearoa New Zealand receive through the accident compensation scheme with what survivors overseas in comparable countries such as Australia can access through court cases. Such comparisons would provide reliable, objective evidence relevant to whether survivors in this country have an effective remedy.
103. If the Government decides not to proceed with the civil litigation reforms the Inquiry recommended, including the right to be free from abuse in care, the Inquiry considers that there would be a strong case for the Government to provide a bespoke scheme of compensation for survivors of abuse in care. This scheme would need to meet their particular circumstances and the challenges they have faced in accessing appropriate compensation. In setting the levels of compensation provided by any bespoke scheme, a primary consideration should be what overseas survivors can access through court cases.

## Nga whakakūiti kaiwawao

### Limitation defences

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104. The Inquiry recommended that until limitation law is reformed, institutions should “rely on limitation defences only in cases where they reasonably consider a fair trial will not be possible”.<sup>156</sup>
105. We are aware that the Attorney-General has pleaded a limitation defence in two cases brought by Cooper Legal clients. One of these defences was pleaded in 2019, before the Inquiry’s report He Purapura Ora, he Māra Tipu was delivered to the Governor-General in 2021. The other was pleaded in 2023. The proceedings remain at a preliminary stage. Further amended pleadings are possible, discovery has not been completed, and evidence is yet to be filed. Both cases are ongoing. The Crown explained that it pleads the limitation defence (where applicable) cases when required to file a defence in response to an historical abuse claim to “protect its position”. The Crown told the Inquiry it does so because it cannot decide whether to actually rely on the limitation defence at trial until later in its trial preparation.<sup>157</sup> The Crown has not advised the Inquiry or Cooper Legal that it will only rely on the limitation defence if it reasonably considers that a fair trial will not be possible. This falls short of accepting the Inquiry’s recommendation.<sup>158</sup>
106. Also, the Inquiry understands that the indications to date from the Crown in at least one of the cases are that the Crown will rely on limitation as a defence. In a recent Court document, the Crown referred to evidence for a pre-trial application as overlapping with the evidence required to determine liability and quantum in the substantive case. This included evidence which the Crown referred to as “closely related to evidence bearing on a number of issues relevant to the [Crown’s] limitation defences”.<sup>159</sup>

156 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Pūretumu Torowhānui, Volume 1 (2021, page 347).

157 See email from Cooper Legal to Royal Commission of Inquiry into Historic Abuse in State Care, Re: Response to Cooper Legal updating witness statement (15 February 2024), and emails between the Crown Law Office and Counsel Assisting (20 February 2024 and 27 February 2024).

158 See email from Cooper Legal to Royal Commission of Inquiry into Historic Abuse in State Care, Re: Response to Cooper Legal updating witness statement (15 February 2023).

159 Attorney-General’s submissions in opposition to application for r 10.15 hearing (24 April 2024, para 4.6(b)(iii)).

## **Te pikinga o ngā utu āwhina ā-ture me te whakangungu**

### **Increase to legal aid rates and training**

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107. The Inquiry recommended that the Government review and consider raising the legal aid rates for abuse in care cases and that training be offered for lawyers interested in pursuing this work.<sup>160</sup> The Government has not carried out any review specific to abuse in care cases or offered the training recommended.<sup>161</sup> In March 2024, the Ministry of Justice declined a request from Cooper Legal for an increased rate.<sup>162</sup>

## **Te kaupapahere kaitāwari taurira me te aratohu ki te urupare i ngā take tūkinō me te whakahapa i ngā pūnaha taurima**

### **Model litigant policy and guide for responding to abuse in care cases**

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108. The Inquiry recommended that by 1 December 2022,<sup>163</sup> the Government draft a model litigant policy to replace the Attorney-General's civil litigation values.<sup>164</sup> The Inquiry also recommended that the Government, State care providers and faith-based institutions develop principles to guide their conduct in abuse in care cases.<sup>165</sup> These recommendations have not been implemented. The Inquiry has been advised that work on these recommendations has been deferred until after the Inquiry's final report is received.

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160 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 339).

161 There has been a general uplift of 12 percent on legal aid rates and the \$50 user charge for civil legal aid has been removed: New Zealand Law Society, "A step in the right directions: Changes to legal aid funding," LawTalk Issue 980 (23 June 2022). Other general changes including a 15 percent increase to eligibility thresholds came into effect on 1 January 2023: Ministry of Justice website, Budget 2023 – Ministry of Justice | Te Tāhū o te Ture (last updated 23 January 2024), <https://www.justice.govt.nz/about/news-and-media/news/budget-2023-ministry-of-justice-te-tahu-o-te-ture>.

162 Ministry of Justice, Tracey Baguley, Legal Services Commissioner to Sonja Cooper, Principal Partner, Cooper Legal (26 March 2024).

163 Within 12 months of the Governor-General receiving He Purapura Ora on 1 December 2021.

164 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 342).

165 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 342).

## Te whakatinanatanga i ngā pūnaha tūāpapa ā-whakapono Implementation by Faith-based institutions

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109. Many of the recommendations in He Purapura Ora, he Māra Tipu were directed at the Government. These included that the Government should establish a new puretumu torowhānui scheme which covers abuse in the care of state, indirect state, and faith-based institutions.<sup>166</sup> The Inquiry also recommended that indirect state and faith-based institutions be given the opportunity to join the scheme voluntarily. If that opportunity was not taken up, the Inquiry recommended that the Government consider options to encourage or compel participation.
110. Amongst other recommendations, the Inquiry recommended that faith-based institutions contribute to the funding for the puretumu torowhānui scheme.<sup>167</sup> As with state institutions, the Inquiry considered that faith-based institutions should phase out their current claims processes for abuse in care. The Inquiry said that any state or faith-based institution which chose to continue their own claims process should direct survivors to the puretumu torowhānui scheme and give them information about it.<sup>168</sup> In addition, the Inquiry recommended that not only State but also faith-based institutions publicly acknowledge and apologise for abuse in care,<sup>169</sup> and use their best endeavours to resolve claims in the lead-up to the establishment of the new scheme (including offering settlements which do not prejudice survivors' rights under the new scheme or any legislation enacted in response to the Inquiry's civil litigation recommendations).<sup>170</sup>
111. The Government has not yet established the puretumu torowhānui scheme recommended. Because of that, faith-based institutions have yet to had the opportunity to join it or to take the other related steps the Inquiry recommended. The Inquiry has commented above on the settlement of claims by faith-based institutions since He Purapura Ora, he Māra Tipu.<sup>171</sup> Some of the faith-based institutions the Inquiry investigated have made improvements to their redress processes and Dilworth School has established two new redress processes. A number of the faith-based institutions the Inquiry investigated have issued formal apologies, and some other steps have been taken.

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166 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 277 and page 284).

167 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 285 and page 323).

168 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 278).

169 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 275).

170 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 347).

171 See above "Resolving claims and preserving rights".

## Katorika Catholic

112. Since 1998, Catholic claims processes have been dealt with through the procedures set out in Te Houhanga Rongo – A Path to Healing. Te Houhanga Rongo only deals with reports of sexual abuse, sexual misconduct or failure to act on a complaint of sexual abuse by clergy and religious leaders. The National Office of Professional Standards coordinates a response to complaints in accordance with Te Houhanga Rongo. Te Houhanga Rongo does not cover abuse claims against lay employees or volunteers,<sup>172</sup> nor does it cover other forms of abuse and neglect. Both are dealt with by the relevant church authority, rather than National Office of Professional Standards. Te Houhanga Rongo was most recently updated in February 2020.
113. In He Purapura Ora, he Māra Tipu the Inquiry found that, while the church has committed to biculturalism, it does not sufficiently involve Māori in its redress design, implementation, or reforms, or incorporate tikanga and te ao Māori values. The Inquiry also reported that the church had committed to a research project into the experiences of Māori in its care. The Inquiry has not been advised of the outcome of this project.<sup>173</sup>
114. The Catholic bishops first jointly apologised for abuse by clergy and religious leaders in 2002.<sup>174</sup> Cardinal John Dew apologised publicly on behalf of the bishops and religious leaders at the Inquiry's public hearings in March 2021 and October 2022.<sup>175</sup>
115. In January 2023, the bishops and congregational leaders of the Catholic Church in Aotearoa New Zealand stated they had agreed to "support the option of an independent entity for survivors to report abuse and gain redress where they wish to do so."<sup>176</sup> They also stated that they supported establishing an independent entity to review and monitor the Church's redress processes for survivors who took this option.<sup>177</sup> It appears therefore that the Church does not intend to phase out its own claims processes if and when a puretumu torowhānui scheme is established.

172 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 172–173).

173 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 174).

174 New Zealand Catholic Bishops Conference, Pastoral Letter on abuse from the New Zealand Bishops (25 June 2002).

175 Transcript of evidence of Cardinal John Dew for the Archdiocese of Wellington and the Metropolitan Diocese at the Inquiry's Faith-based Redress Hearing Phase II (Royal Commission of Inquiry into Abuse in Care, 26 March 2021, pages 801–802); Transcript of evidence of Cardinal John Dew at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 17 October 2022, page 213).

176 Statement of Catholic Church Leaders on looking forward from the work of the Royal Commission on Abuse in Care (10 January 2023).

177 Statement of Catholic Church Leaders on looking forward from the work of the Royal Commission on Abuse in Care (10 January 2023).

## Mihingare Anglican

116. As noted in He Purapura Ora, he Māra Tipu, changes were made to the Anglican Church's Standards known as Title D in 2020. When the Church now receives complaints an Independent Registrar assesses them to determine whether there is sufficient substance to the complaint to make it deserving of further investigation and if so whether the allegation if proven would constitute 'misconduct' or 'unsatisfactory conduct'. The complaints that could amount to 'misconduct' are heard by a tribunal. If the complaint is considered to be one of 'unsatisfactory conduct' then the further handling of the complaint is at the discretion of the licencing bishop or Archbishop. Previously complaints of 'misconduct' were dealt with by a Bishop. Claims for redress have continued to be considered by the Church on a case by case basis. The Church told the Inquiry that work has continued to develop redress processes including a decision in 2023 to enter into a partnership agreement with Kooyoora from Victoria Australia to develop approaches to complaint handling and redress responses drawing on indigenous Māori and Pacifica knowledge and practice.
117. In He Purapura Ora, he Māra Tipu, the Inquiry found that the church failed to honour commitments to Māori and Pacific peoples in developing its response to abuse in care. The Inquiry is aware that Māori and Pacific Peoples are now involved in the Church's ongoing development of responses to abuse in care.
118. At the Faith-based Institutions Response Hearing, Right Reverend Ross Bay acknowledged that survivors of abuse did not receive the genuine care to which they were entitled from the Church, and that it had failed to respond to people who came forward with disclosures of abuse.<sup>178</sup>
119. Other Anglican Church affiliated entities have made changes to their internal redress processes and have also issued apologies, such as St Peters School Cambridge, Christs College Christchurch, Dilworth School, and the Anglican Trust for Women and Children.<sup>179</sup>
120. The Inquiry understands that the Anglican Church supports an independent and universal redress scheme in principle but it also considers that survivors should have the option of approaching faith-based and other institutions directly if they wish.<sup>180</sup> That would mean institutions would have to continue their own redress processes rather than phase them out, as the Inquiry recommended.

178 Transcript of evidence of Right Reverend Ross Bay at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 20 October 2022, page 544).

179 <https://www.stpeters.school.nz/Alumni/Historical-Abuse-Apology>; <https://atwc.org.nz/wp-content/uploads/2021/05/ATWC-royal-commission-2.pdf>; <https://christcollege.com/about-us/governance/royal-commission-of-inquiry>.

180 Redress Submission on behalf of The Anglican Church in Aotearoa, New Zealand and Polynesia, Te Hāhi Mihinare ki Aotearoa ki Niu Tirenī, Ki Ngā Moutere o te Moana Nui a Kiwa dated 23 June 2021 at 7; Transcript of evidence of the Most Reverend Philip Richardson at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 20 October 2022, page 553).



## Weteriana Methodist

121. In 2018, the Methodist Church developed a formal redress process to address claims of historical abuse in its care. Its intent was to adopt a less legalistic approach to redress. The redress scheme follows procedures in which a review panel (including two people independent of the church) considers allegations. An appeal process is also provided.<sup>181</sup>
122. At the Faith-based Institutions Response Hearing, the church indicated its desire to maintain responsibility for redress but stated that it would consider the Inquiry's recommendations in He Purapura Ora, he Māra Tipu regarding an independent redress scheme.<sup>182</sup>
123. At that hearing, the church acknowledged that it carries the primary responsibility for ensuring the protection and wellbeing of people in its care, and that it failed in this. It apologised to every person who had been abused in its care. It accepted that during the Inquiry period it did not have safeguarding policies and processes in place and that "this led to unimaginable suffering of some children, young people and vulnerable adults".<sup>183</sup>

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181 The Methodist Church of New Zealand, Information to applicants making a claim of abuse that occurred while in Methodist care (October 2019).

182 Transcript of evidence of Reverend Tara Tautari at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 18 October 2022, page 344).

183 Transcript of evidence of Reverend Tara Tautari at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 18 October 2022, page 250).



## Te Hāhi Pehipitiriana o Aotearoa Presbyterian Church of Aotearoa New Zealand

124. The Presbyterian Church has a complaints process, which is outlined on its website.<sup>184</sup> The church acknowledged during the Faith-based Institutions Response Hearing that its complaints process is primarily a disciplinary process focused on the person who is the subject of the complaint. However, the church told the Inquiry that more recently it has incorporated the possibility of historical redress, and it intends to develop the process further to make it more survivor focused.<sup>185</sup> There was a further commitment by the church to address how the complaints process can accommodate different cultural values. It acknowledged that tikanga Māori and Pacific cultural values are not currently accommodated.<sup>186</sup>
125. The church also told the Inquiry that it has not yet addressed, at a governance level or at its general assembly, whether the church should take ownership for abuse that took place in its related institutions.<sup>187</sup> The separation of the church from the autonomous Presbyterian support organisations has resulted in the absence of a centralised governance structure providing a final level of monitoring and oversight and a lack of information sharing. While Presbyterian Support Otago and Presbyterian Support Central no longer provide direct care to children, young people and adults in the way that they did during the Inquiry period, support organisations still receive complaints for abuse that occurred during that period. For example, Presbyterian Support Otago acknowledged it received complaints between 2004 to 2019 of historical abuse that occurred in its children's homes between 1950 and 1999.<sup>188</sup>

184 Presbyterian church of Aotearoa New Zealand website, Contact Us, Historic abuse (accessed on 12 August 2023), <https://www.presbyterian.org.nz/about-us/contact-us/historic-abuse>.

185 Transcript of proceedings at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 19 October 2022, pages 316–318).

186 Transcript of proceedings at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 19 October 2022, page 319).

187 Transcript of evidence of Wayne Matheson of Presbyterian Church of Aotearoa New Zealand at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 19 October 2022, pages 312–313).

188 Transcript of evidence of Jo O'Neill of Presbyterian Support Otago at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 19 October 2022, page 287 at 11–12).

126. In 2017 or 2018, a senior decision maker within Presbyterian Support Otago reviewed records from the period children and young people stayed in its residential homes.<sup>189</sup> Following this review, and legal advice from an advisor, the senior decision maker instructed that all personal individual children's records held should be destroyed (apart from the register of the names and dates) because the records were "too much of a risk".<sup>190</sup> The Inquiry is not aware whether Presbyterian Support Otago is facing any formal consequences for destroying the documents. Presbyterian Support Otago CEO Jo O'Neill acknowledged the importance of those documents for survivors and told the Inquiry she would not make that same decision today, were she in the decision making position.<sup>191</sup>
127. The church told the Inquiry that it has a policy of zero tolerance of abuse. It has however, acknowledged that the church's policy had not been consistently and thoroughly applied and apologised for that. The church has stated that it has worked to reach out to those affected to offer its apology, pastoral care and support.<sup>192</sup>
128. It is unclear whether the Presbyterian Church supports the Inquiry's recommendations in He Purapura Ora, he Māra Tipu, including that a new puretumu torowhānui scheme should be established. Presbyterian Support Otago advised the Inquiry that it would support an independent redress scheme and the recommendations made in He Purapura Ora.<sup>193</sup> The Chief Executive and former Chief Executive of Presbyterian Support Central did not support there being a single entity responsible for providing a redress scheme for abuse in care independent of the institutions in which the abuse occurred. This was on the basis that those responsible for the abuse should take accountability for it and that having a centralised agency for redress risks resulting in a lack of empathy, caring and understanding towards survivors.<sup>194</sup> As the Inquiry stated in He Purapura Ora, he Māra Tipu, however, there is nothing in the puretumu torowhānui scheme it recommended which would stop faith-based institutions from ensuring accountability by acknowledging and apologising for abuse and contributing to the cost of puretumu torowhānui.<sup>195</sup>

189 Transcript of evidence of Jo O'Neill of Presbyterian Support Otago at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 19 October 2022, page 287 at 11-12).

190 Jo O'Neill, chief executive officer of Presbyterian Support Otago, Notes of discussions with senior staff regarding the destruction of records (21 December 2020, page 1).

191 Transcript of evidence of Jo O'Neill of Presbyterian Support Otago at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 19 October 2022, page 290).

192 The Presbyterian Church of Aotearoa New Zealand's Response to Royal Commission of Inquiry into Abuse in Care Notice 523 (4 October 2022, page 1, para a-b).

193 Transcript of evidence of Jo O'Neill of Presbyterian Support Otago at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 19 October 2022, page 294).

194 Transcript of evidence of Naseem Joe Asghar and Patrick Waite at the Inquiry's Faith-based Institutions Response Hearing ((Royal Commission of Inquiry into Abuse in Care, 19 October 2022, page 272 to 273).

195 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 277).

## **Te Ope Whakaora**

### **The Salvation Army**

129. As noted in He Purapura Ora, he Māra Tipu, The Salvation Army has an established process that has evolved over time as its understanding of the impact of abuse has changed. One individual, Commercial Manager and Manager Royal Commission Response Murray Houston, makes decisions about all redress claims relating to abuse in children's homes.<sup>196</sup> In February 2022, The Salvation Army published a two-page summary document on its website listing its overarching redress principles and the forms of redress for survivors.<sup>197</sup>
130. The Inquiry reported in He Purapura Ora, he Māra Tipu that while The Salvation Army has policies that emphasise its commitment to biculturalism, it does not involve Māori in designing its claims process nor does it incorporate tikanga Māori or te ao Māori values into that process.<sup>198</sup>
131. The Salvation Army has issued public apologies. At the Faith-based Redress Hearing, The Salvation Army apologised for abuse occurring in its care and acknowledged at times it had not done as well as it could.<sup>199</sup>
132. The Salvation Army told the Inquiry that it supports the Inquiry's recommendations in He Purapura Ora, he Māra Tipu, including those related to a new puretumu torowhānui scheme but that the creation of such a scheme and the continued existence of the Army's own scheme should not be mutually exclusive.

## **Te Hāpori Karaitiana o Gloriavale**

### **Gloriavale Christian Community**

133. Gloriavale does not have a redress process or any relevant policies. At the Faith-based Redress Hearing, Gloriavale leader Howard Temple told the Inquiry that a redress and compensation package had been discussed but "we just don't have the means of doing it at the present time".<sup>200</sup> He said he would support a single independent redress scheme for survivors.<sup>201</sup>
134. In May 2022, Gloriavale leaders acknowledged their role in failing to prevent abuse and protect victims of abuse.<sup>202</sup>

196 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, pages 191–193).

197 The Salvation Army, Salvation Army redress information (8 February 2022).

198 Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 197).

199 Transcript of evidence of Gerald Walker from the Faith-based Redress Hearing Phase II (Royal Commission of Inquiry into Abuse in Care, 15 March 2021, page 20).

200 Transcript of evidence of Howard Temple at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 13 October 2022, page 77).

201 Transcript of evidence of Howard Temple at the Inquiry's Faith-based Institutions Response Hearing (Royal Commission of Inquiry into Abuse in Care, 13 October 2022, pages 98–99).

202 Gloriavale Christian Community, News – Open letter from Principal (7 August 2022).

## **Plymouth Brethren Christian Church**

### **Plymouth Brethren Christian Church**

135. The Plymouth Brethren Christian Church does not have, nor has ever had, any national policies relating to redress claims. The church told the Inquiry that “matters are dealt with as they arise under the guidance of the current elders in accordance with the teachings of the Holy Bible”.<sup>203</sup> It is also not clear whether the church supports the He Purapura Ora, he Māra Tipu recommendations.

## **Te Ratonga Whakarongo o Dilworth, te Pakirehua Motuhake me te Kaupapa Puretumu**

### **Dilworth Listening Service, Independent Inquiry and Redress Programme**

136. In September 2019, the Dilworth Trust Board launched an independent Listening Service for former students and their families. This allowed them to speak with an independent clinical psychologist. Over 170 former students and / or their family members have received psychological support.

137. In 2022, Dilworth School established the Dilworth Independent Inquiry into Abuse at Dilworth School and the Dilworth Redress Programme. The Dilworth Independent Inquiry, chaired by Dame Silvia Cartwright with Frances Joychild KC as Co-Inquirer, reviewed the nature and extent of sexual and serious physical abuse of Dilworth students between 1 January 1950 and 1 July 2023.<sup>204</sup> Dilworth Independent Inquiry’s report was released on 18 September 2023.

138. Survivors of:


- a. sexual abuse or serious physical abuse by a Dilworth representative or by a person who had access to the survivor through a Dilworth representative, or
- b. survivors of sexual abuse by another Dilworth student, can apply to the Dilworth Redress Programme for financial and other redress.

139. In all cases, the survivor must have been a student of Dilworth School and suffered the abuse while studying there. Applications may also be made by the families or estates of deceased survivors.<sup>205</sup>

<sup>203</sup> Plymouth Brethren Christian Church, Response to the Royal Commission’s Notice to Produce No 1, Response to Schedule B of the Notice (23 April 2021, page 14).

<sup>204</sup> Dilworth Independent Inquiry, Extension to inquiry reporting date (27 October 2022).

<sup>205</sup> Dilworth Redress Programme, Dilworth Redress (2023).

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140. The redress programme has redress facilitators to assist survivors in making applications. Their role includes preparing a report for the Independent Redress Panel on each claim, which the relevant survivor may review for factual errors. The redress programme funds survivors' reasonable legal costs for preparing their applications and advice on whether to accept a determination by the redress panel. The redress programme may also fund counselling and other support for survivors during the application process.
141. The redress programme's terms of reference state that it will recognise and promote survivors' cultural needs, the principles of te Tiriti, and tikanga Māori. This requirement applies to the application process and the redress provided.
142. The redress panel is independent from Dilworth. Its current members are a former High Court judge, a clinical psychologist and a governance expert.<sup>206</sup> It will assess applications on the 'reasonable likelihood' standard of proof. The starting point is that survivors should be believed, subject to there being compelling contrary evidence. The redress panel may award redress including counselling and other psychological support paid for by Dilworth, an apology from Dilworth, financial redress, and any other form of personalised redress requested by the survivor that the panel considers fitting. The maximum amount the panel may award is \$200,000, but in exceptional circumstances up to \$300,000 may be awarded.
143. A redress panel determination is binding on Dilworth if the survivor accepts it. Acceptance by a survivor amounts to a full and final settlement of their claim against Dilworth, except that the survivor may still apply to any puretumu torowhānui scheme introduced by the Government.
144. The redress programme's terms of reference provide that the redress panel may appoint an independent clinical psychologist to review the redress programme.<sup>207</sup> Following a review and consultation with survivors and Dilworth, the redress panel may decide to amend its operational procedures. The redress panel may also recommend to Dilworth that the redress programme's terms on eligibility, scope and financial redress be amended.<sup>208</sup>

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206 Dilworth Response website, Redress Programme, Dilworth Response (accessed 8 February 2024), <https://dilworthresponse.org.nz/redress-programme/>.

207 Dilworth Redress Programme Terms, (amended 30 October 2023, clause 45).

208 Dilworth Redress Programme Terms, (amended 30 October 2023, clauses 46 and 47).

145. If the Government introduces a pūretumu torowhānui scheme as recommended by the Inquiry in He Purapura Ora, he Māra Tipu, Dilworth may decide to terminate the redress programme.<sup>209</sup> Otherwise, after three years and on a yearly basis after then, the redress panel will consider whether the redress programme should be wound up after current claims are determined. Any decision in this regard by either Dilworth or the redress panel may only be taken once certain conditions have been met. These include a period of notice and a period of consultation with survivors.<sup>210</sup>
146. The redress panel began making redress determinations in March 2024.<sup>211</sup> Before then, the panel made two interim payments to survivors.<sup>212</sup> The Inquiry heard that the panel did not begin making determinations until March 2024, because some survivors wanted to wait for the independent inquiry to report before applying to the redress programme. The redress panel wanted to have a reasonably large number of applications before making any awards so it could better ensure appropriate relativity between the financial and other redress it awards to survivors.<sup>213</sup> Dilworth also advised the Inquiry that the redress panel had made an independent decision not to make awards until it had read the independent inquiry's report.

## **Ngā arotakenga purapura ora**

### **Survivor critiques**

147. Some survivors expressed concerns about the redress panel's approach before March 2024. These included concerns that no redress awards had been made before March 2024, and concerns that the panel's approach was inconsistent with the redress programme's terms of reference. The terms of reference stated that a survivor may file their application and have it determined by the panel without waiting for the independent inquiry's report. The redress panel was empowered to review any such determination and make a further award to the survivor if the panel considered that appropriate in light of the independent inquiry's findings. Alternatively, the survivor could file their application and have it held until the redress panel had considered the independent inquiry's findings and any new information relevant to the survivor's application.<sup>214</sup>

<sup>209</sup> Dilworth Redress Programme Terms, (amended 30 October 2023, clause 50).

<sup>210</sup> Dilworth Redress Programme Terms, (amended 30 October 2023, clauses 49–51).

<sup>211</sup> Dilworth Redress Programme website, Frequently Asked Questions (accessed 20 May 2024), <https://dilworthredress.org.nz/faqs/>

<sup>212</sup> Dilworth Redress Programme website, Frequently Asked Questions (accessed 20 May 2024), <https://dilworthredress.org.nz/faqs/>

<sup>213</sup> Summary Notes from the meeting with Dilworth (27 April 2023, page 1).

<sup>214</sup> See clauses 11 and 12 of the Dilworth Redress Programme Terms, in A Dilworth School Survivor's Vlog, We were children, Episode 8, The Dilworth Response Part 1 (14 May 2023), <https://www.youtube.com/watch?v=cUwSsvfxN3c>.

148. There have also been other critiques of the redress programme, including how it was designed and its financial maximums.<sup>215</sup> Some survivors have referred to the independent inquiry's findings about the severe impacts on survivors of abuse at Dilworth, the school's significant assets, and amounts survivors have been awarded in Australian courts, as justifying significantly higher amounts.<sup>216</sup> Some survivors have said they feel as if they are second-class citizens when comparing the amounts available under the redress programme with what survivors have been awarded through court action in Australia.<sup>217</sup>

## **Ngā tūtohunga o te Pakirehua Motuhake o Dilworth me ā mātou kitenga**

### **Dilworth Independent Inquiry's recommendation and our observations**

149. The Dilworth Independent Inquiry recommended that the Dilworth Trust Board consult widely and collaborate with abused former students and families and whānau of deceased former students who were or were suspected of having been abused, to identify the steps required to supplement the redress programme and to help with healing and moving forward.<sup>218</sup> To assist with this, the Inquiry offers the following observations.
150. The redress programme has a number of the features recommended in He Purapura Ora, he Māra Tipu. It was established some eight months after He Purapura Ora, he Māra Tipu was tabled. This compares favourably with the Government's lack of progress to date on developing and establishing a new, universal redress scheme. While the redress panel did not start making awards until March 2024 for the reasons set out above, the Inquiry understands awards are now being made. The panel has a very broad discretion in terms of the types of redress it may award survivors.
151. The redress programme's financial redress maximums are more generous than any previous out-of-court scheme for survivors of abuse in care in Aotearoa New Zealand and many of the overseas schemes the Inquiry considered in He Purapura Ora, he Māra Tipu, or that have otherwise been developed in response to situations of abuse in institutional care.

<sup>215</sup> Jones, M, Dilworth sex abuse survivors reject school's payment cap proposal, Business Desk (13 July 2022); "RNZ Interview with Neil Harding in response to the [independent Dilworth] inquiry report," RNZ News (24 September 2023), <https://www.youtube.com/watch?app=desktop&v=Ggzaod8meak&t=2s>

<sup>216</sup> A Dilworth School Survivors Vlog, We were children, Episode 8, The Dilworth Response Part 11 (14 May 2023), <https://www.youtube.com/watch?v=cUwSsVfxN3c>; "RNZ Interview with Neil Harding in response to the [independent Dilworth] report," RNZ News (24 September 2023), <https://www.youtube.com/watch?app=desktop&v=Ggzaod8meak&t=2s>

<sup>217</sup> A Dilworth School Survivors Vlog, We were children, Episode 8, The Dilworth Response Part 11 (14 May 2023), <https://www.youtube.com/watch?v=cUwSsVfxN3c>.

<sup>218</sup> Dilworth Independent Inquiry, An Independent Inquiry into abuse at Dilworth School (September 2023, page 25, Recommendation 3).

152. However, there was a higher maximum in the Canadian Independent Assessment Process for Indian Residential Schools for “standard track claims” (\$CA275,000 or NZ\$315,000), and a considerably higher maximum in the “complex track” where actual income loss could be proven (up to an additional \$CA250,000 or NZD\$287,000).<sup>219</sup> In the Irish Residential Institutions redress scheme the maximum was €300,000 (NZ\$488,000), with discretion to award more in exceptional cases.<sup>220</sup> The amounts available in the Irish Residential Institutions redress scheme were set in 2002 and the individual assessment process amounts in 2007. Accordingly, higher amounts would be required today to provide similar value.
153. It is the case that the standard of proof (that is, the degree to which the survivor must prove their claim) was higher in some respects in the individual assessment process than in the redress programme. For example, in the ‘standard track’ of the individual assessment process, the abuse claimed and a particular harm claimed both had to be proven on the ‘balance of probabilities’ standard. That is the standard used in civil cases in the courts. Once those matters were proven, the survivor only had to show that it was ‘plausible’ (a lower standard of proof) that the abuse caused the harm.<sup>221</sup>
154. In the redress programme, the standard of proof in relation to the abuse claimed is ‘reasonable likelihood’.<sup>222</sup> It appears likely that this standard also applies to other matters relevant to determining the level of any financial redress.<sup>223</sup> ‘Reasonable likelihood’ is a lower standard than ‘balance of probabilities’ but higher than ‘plausibility’.<sup>224</sup> Also, the starting point in the redress programme is that the survivor should be believed unless there is compelling evidence to the contrary.<sup>225</sup>
155. To our knowledge, there is no publicly available information regarding what standard of proof was applied in the Irish Residential Institutions redress scheme. However, differences between the redress programme and the Irish scheme include that, for example, the Irish scheme gave a right of audience to alleged abusers. This included the right to cross-examine survivors.<sup>226</sup> There is no such right in the redress programme for an abuser to confront a survivor. The starting point in the Dilworth Redress Programme is that the survivor is believed unless there is compelling evidence to the contrary.

219 Royal Commission of Inquiry into Abuse in Care, *He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui*, Volume 1 (2021, pages 305–306).

220 Regulation 5 of the Residential Institutions Redress Act 2002 (Section 17) Regulations 2002. See also regulation 4, regarding awards of aggravated damages. We note, however, that the average payment was €62,253.00 (approximately NZ\$100,000); <https://www.rirb.ie/documents/Annual-Report-2018.pdf>.

221 Royal Commission of Inquiry into Abuse in Care, *He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui*, Volume 1 (2021, page 433, footnote 927).

222 Dilworth Redress Programme Terms, Dilworth Redress (amended 30 October 2023, clause 10).

223 Dilworth Redress Programme Terms, Dilworth Redress (amended 30 October 2023, clause 37).

224 For a discussion of these varying standards of proof, see Royal Commission of Inquiry into Abuse in Care, *He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui*, Volume 1 (2021, page 293).

225 Dilworth Redress Programme, Dilworth Redress Terms (amended 30 October 2023, clause 1037).


226 Residential Institutions Redress Act 2002, section 11(8)(a)–(c).



156. It is also the case that redress schemes for abuse generally do not provide financial payments at the same levels that potentially could be obtained through the courts if a survivor took a successful case (that is, financial payments are not intended to be compensatory).<sup>227</sup> This is based on factors such as the lower standards of proof required in some redress schemes and what can be the less traumatising and low-cost processes that redress schemes provide compared to court processes.
157. However, survivors overseas have generally had the option to try to obtain a higher award through the courts if they did not wish to accept an award from a redress scheme. As already mentioned, limitation and other law reform has enabled some survivors to obtain very high awards, including in Australia. Survivors here, including survivors of abuse at Dilworth School, generally do not have the same option. Unless and until survivors' options in this regard significantly improve here so that they can be seen as comparable to Australia or other jurisdictions we often look to, this should be reflected in higher financial payments being available in the puretumu torowhānui scheme, and in any other out-of-court scheme which institutions choose to introduce or continue in Aotearoa New Zealand, than in overseas schemes.
158. As referred to above, the redress panel has only been making redress determinations for a few months. It is not clear what survivors' reactions have been to determinations made. It also remains to be seen whether and how many of the financial awards made by the redress panel reach the maximums provided for in the redress programme, how the average award made compares with overseas and Aotearoa New Zealand out-of-court schemes, and what the nature and extent of non-financial redress awarded by the redress panel will be (including the extent to which that aligns with the Inquiry's recommendations in He Purapura Ora, he Māra Tipu).<sup>228</sup> No doubt there will be an ongoing discussion between survivors, the redress panel and Dilworth about these matters, including potentially through the independent reviews referred to above.

<sup>227</sup> Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 304).

<sup>228</sup> See for example Royal Commission of Inquiry into Abuse in Care, He Purapura Ora, he Māra Tipu: From redress to Puretumu Torowhānui, Volume 1 (2021, page 303 and page 304).



"They tried  
to 'shock' me out  
of being gay!"

**JOSHY FITZGERALD**  
NZ European, Māori  
(Te Arawa)

# Joshy Fitzgerald

**Hometown:** Tāmaki Makaurau Auckland

**Age when entered care:** 14 years old

**Year of birth:** 1969

**Time in care:** 1983–1985

**Type of care facility:** Boys' home – Hamilton Boys' Home in Kirikiriroa Hamilton; psychiatric hospital – Tokanui Psychiatric Hospital located south of Te Awamutu; Social Welfare family home; foster homes.

**Ethnicity:** NZ European and Te Arawa descent.

**Whānau background:** One of eight kids; other siblings also went into care. Dad left when Joshy was 4 years old, and his mum remarried when he was around 5 or 6 years old.



**I was a bit of a black sheep in my family growing up and was beaten constantly. There were times I couldn't walk because my legs would be black and blue from bruises. It wasn't a good childhood.**

I became a State ward and was initially placed in Hamilton Boys' Home aged 14 years old. Some staff treated me okay, some didn't. The staff who did the showers and night shifts were the creepy ones. There was sexual abuse at night, after we'd gone to bed when the staff would come to check on us. I'm sure everyone knew what was going on, but no one said anything.

They always preyed on the quiet ones like me. Never the rowdy ones who would make a scene.

I told a staff member about it once, and I think he believed me, but nothing ever happened. I thought, what's the point, so I didn't tell anyone else after that.

It wasn't long before they sent me to Tokanui Hospital. That happened after I tried to set fire to a doctor's surgery in Rotorua. I'd been sent back home and I didn't want to be there – I wanted to go back to the boys' home, because I didn't get beaten there. But nobody talked to me about what was happening or how long I was going to be there. Social workers never contacted me or came to see me.

I was a scared little kid. I felt like I didn't belong in there. I felt I was being punished for my behaviour, but I didn't know what I had done. I knew being in Tokanui wasn't going to be good for my mental health in the long run. I started running away, but I'd get picked up and taken back, and put into seclusion. Complaining to police about the abuse wasn't an option – I knew nobody was going to believe me anyway.

They gave me electric shocks at Tokanui because I was gay. I remember asking, "Where are you taking me?" The male nurse said, "We've got to get this gay out of you." I said, "Well, it's not something that I choose to be."

That was it. Nobody ever talked to me about being diagnosed with anything. It was just when I mentioned I was gay that everything changed, and I got three sessions of electric shocks and then nothing was ever said.

The staff treated me differently because of my sexuality – they'd call me names. Some of the nurses would call me a faggot, like, "Go to bed, go have a shower, you faggot." They were extremely homophobic.

I was sexually abused at Tokanui. It was constant – every night, a male staff member would come in, then a couple of hours later, another would come in. Sometimes I'd sleep under the bed, because I thought if they didn't see me in bed when they opened the door, they might go away.

I was raped by another patient there, and I got really upset about it, so the staff drugged me up to calm me down and I was out of it for about three days. That was it – it was never mentioned again.

I think I was an easy target because I had no one to tell, and the staff wouldn't listen. The staff at Tokanui didn't like any trouble. If you started up, they'd bring you medicine or give you an injection. I started rebelling and got injections at night. I didn't know what it was, but I'd sleep for hours and be really dozy when I woke up.

After Tokanui I went to a Social Welfare family home and was abused there by the husband. I understand he was later arrested for sexually abusing children. He'd threaten me each time he sexually abused me, telling me I'd be locked up, I'd be taken back to Tokanui.

I ended up in foster homes too, just a constant back-and-forth between the boys' home, foster homes, my mum's place. Once I was 16 years old, I went back to my mum's and she had my suitcases packed and was standing out the front of the house. I was just dumped off at a social worker's place in Rotorua. I never heard from Social Welfare again once I turned 16 years old.

I just wanted to be somewhere that was safe.

I went to Christchurch and studied to be a pastry chef, and I'm now qualified as a chef and pastry chef. I had a really good tutor who helped me find accommodation and I got work. I went to Australia for a while too.

But the abuse has affected my relationships and my trust. I can't let anyone touch me or hug me. I have a real fear of being hurt, so I push people away. I don't go out – I stay by myself all the time because my health is so bad now.

I believe that I contracted HIV when I was sexually abused at Tokanui, and I have full-blown AIDS now. I'm on borrowed time at the moment, anything can take me out. So, I'm just trying to cope with that. There's a lot of stigma out there in relation to HIV and having to deal with that is a bit much sometimes.

At one point I was self-destructing – drinking and taking a lot of drugs. I had counselling, but it was hard to open up – nobody else had listened, so I wasn't going to talk to other people, because they wouldn't believe me.

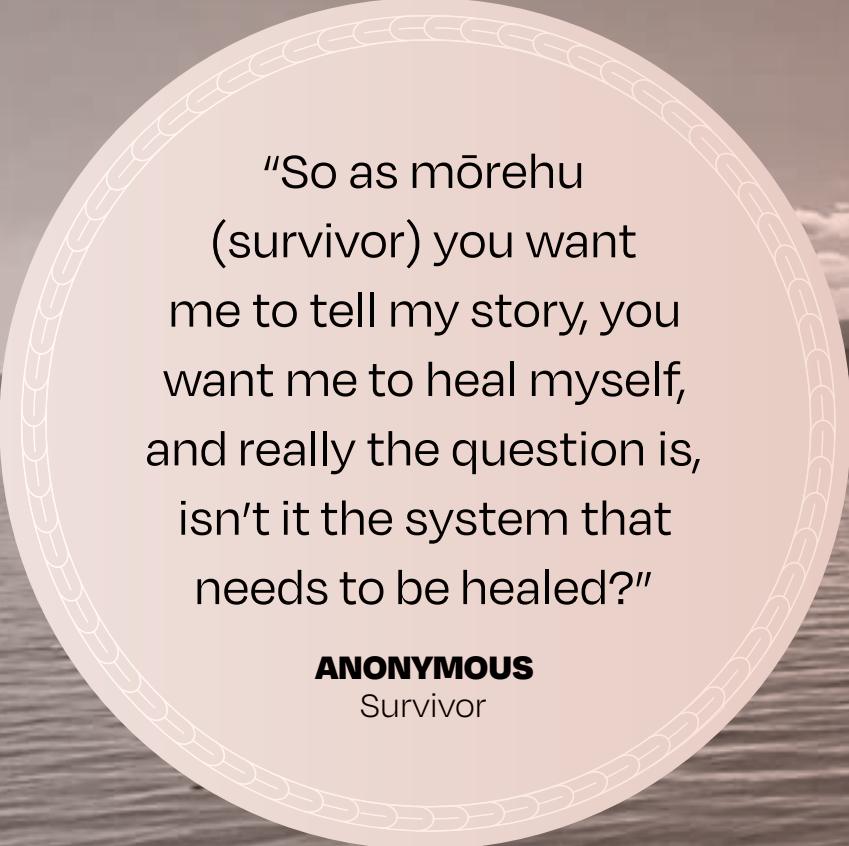
My neurological stuff isn't good at the moment and I'm not sure if that's because of the AIDS or the electric shocks. I've lost strength in my hands to pick things up. I'm not sure what the long-term effects of the electric shocks are.

I've been disconnected from my culture. I don't go to my family marae, I just don't feel like I belong. Māori culture never got brought up at Tokanui or the Hamilton Boys' Home. I took a te reo course a few years ago – I wish I'd had more opportunity to learn it, that would at least give me a feeling of belonging, because I don't feel like I belong anywhere. I feel like my innocence has been taken away.

There needs to be more support where young people can have somebody they can trust to talk to. If you've got someone you can trust, you know you're not alone. As long as someone cares for our young people, that's the main thing.<sup>229</sup>

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229 Witness statement of Joshy Fitzgerald (25 February 2022).



"So as mōrehu  
(survivor) you want  
me to tell my story, you  
want me to heal myself,  
and really the question is,  
isn't it the system that  
needs to be healed?"


**ANONYMOUS**  
Survivor

# Ūpoko | Chapter 3

## Ngā whakataunga o te Kōmihana mō te whakatinanatanga o ngā tūtohunga i roto i He Purapura Ora, he Māra Tipu

### The Inquiry's conclusions on the implementation of the recommendations set out in He Purapura Ora, he Māra Tipu

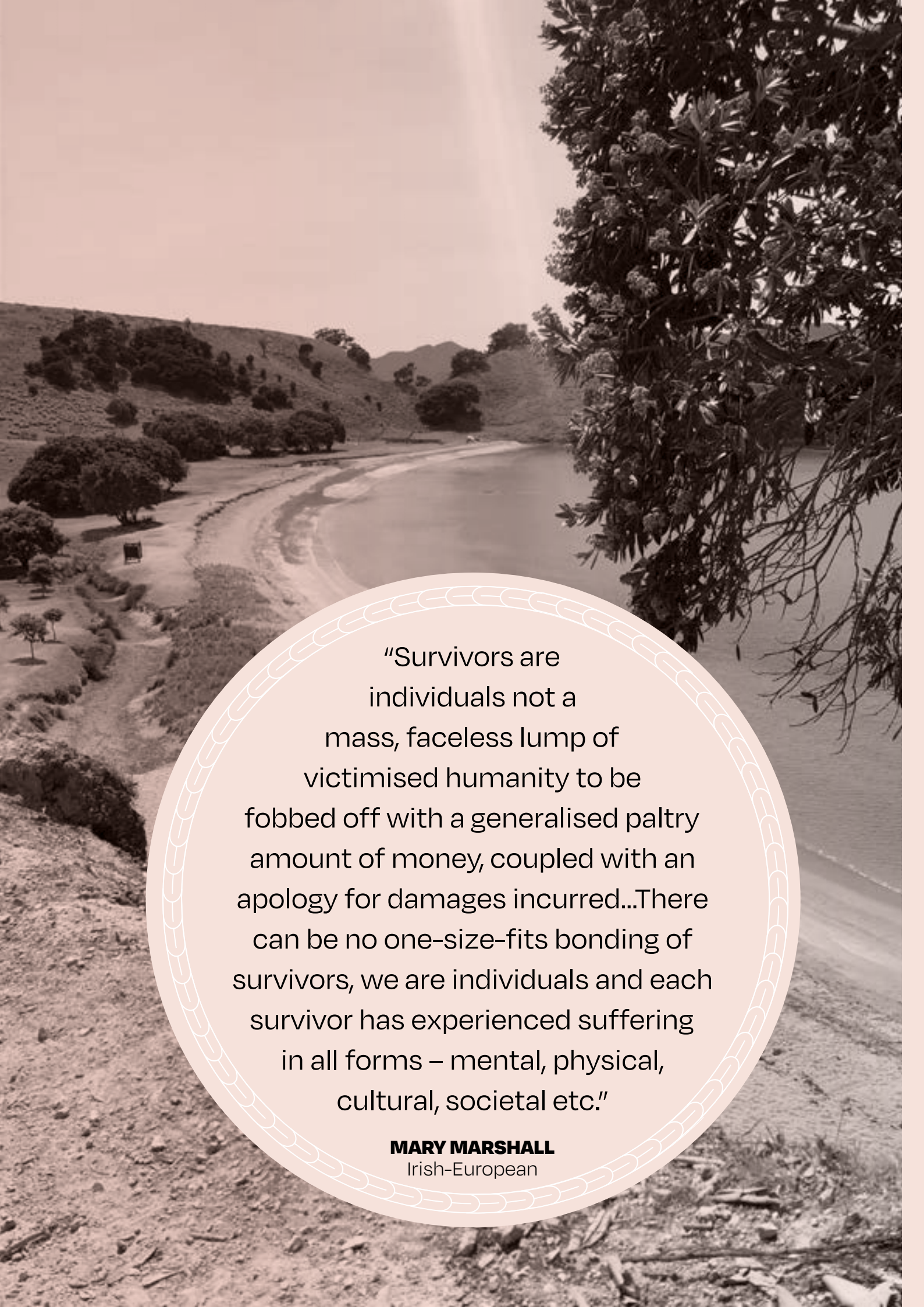
159. In 2021, the then Government amended the Inquiry's terms of reference. This was on the basis that it would allow Government to receive the Inquiry's recommendations on redress and make improvements more quickly. After receiving He Purapura Ora, he Māra Tipu in December 2021, the Government expressed regret and recognised a range of the problems set out in the Inquiry's report. The Government also stated that there was an urgent need for action.
160. Since then, there has been very little clear progress by the Government in implementing the Inquiry's recommendations. Timeframes in He Purapura Ora, he Māra Tipu have not been met, and the Government has not met the timeframes it set itself. The steps the Government has taken to date are inconsistent in important respects with the recommendations of the Inquiry.
161. In 2023, the then Government deferred consideration of the civil litigation reforms the Inquiry recommended until after the Inquiry's final report is provided. It is unclear whether the Government sees any problem with civil litigation settings or the accident compensation scheme as they relate to survivors of abuse in care, despite the Inquiry's findings.
162. There have been some positive initiatives. However, many survivors in Aotearoa New Zealand continue to have no effective remedy, and the puretumu torowhānui system which the Inquiry recommended has not been implemented. In comparison to Australia, many survivors in Aotearoa New Zealand have a second or third-class system. Unless significant change occurs, this will continue to be the case.

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163. Meaningful reform which provides fair, holistic and comprehensive redress will inevitably be expensive for the Government and faith-based institutions. The alternative is for many survivors and their whānau, and society at large to continue bearing these costs, despite the abuse having taken place in State and faith-based care and the survivors not being at fault.
164. Positive change for survivors requires prioritisation by decision-makers, matching investment and political will (that is, there is committed support among key decision-makers for a particular policy solution to a particular problem).<sup>230</sup> All of these features will be required to achieve the puretumu torowhanui scheme recommended by the Inquiry. As the Australian experience shows, civil litigation or other reform can be achieved that enables survivors to obtain financial awards and settlements that better reflect what abuse has cost them, and which are far beyond anything currently available in Aotearoa New Zealand including through the accident compensation scheme. The question is not whether these things can be done, but whether New Zealanders want to ensure survivors of abuse and neglect receive holistic redress that recompenses them for what happened, and the lost economic opportunities and loss of life enjoyment, and in particular whether Government wants to do them.
165. Survivors have been told that they matter, they are respected for their courage, and they have been heard. Some apologies have been given, and a national apology is being planned. The Inquiry considers much more needs to be done, mostly led by the Government. And Government needs to act promptly so that survivors do not continue to die without receiving effective, holistic redress, the puretumu torowhānui recommended by the Inquiry.

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<sup>230</sup> Post, LA, Raile, ANW & Raile, ED, "Defining political will," *Politics & Policy*, Volume 38, Issue 4 (2010, pages 653–676).





"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 bonding of survivors, we are individuals and each survivor has experienced suffering in all forms – mental, physical, cultural, societal etc!"

**MARY MARSHALL**  
Irish-European

# 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 tūkinō  
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 tihore 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 mārīe mōwai rokiroki āio nā koutou ko Rongo  
Koia ka puta ki te whaiāo ki te ao mārama  
Whitiwhiti ora e!

– Paraone Gloyne

# A Love Song for the Living Seeds

The love within me for you, the people, remains unchanged

Left alone, abandoned by justice and order

Subjected to the silent suffering of mistreatment

A heaviness in the core, silenced into stillness

The gnawing of my heart cannot compare to the anguish of yours

Perhaps you are hidden in the depths of the night, Mirumiru-te-pō

A night dark and dense

Where there may be no turning in your memories

But here's my thought: 'Do not push open the door to enter'

Instead, let us turn to seek life and well-being

Is memory dead? No, certainly not!

Arise, friends, let the truth resound loudly from the heart of Kareāroto

To ascend to the clear skies, a sky washed clean at dawn

Emerging from the troubled world to a world of promise

A path for you, my flock of herons, to life

So, the precious core may blossom within you, my living seeds

Scattered across the land, cherished and growing in abundance

Rising in One-haumako, in One-whakatupu

There, my friends, lies the hope to fulfil the cost

To restore your human dignity, your inherited mana from your ancestors

Thus, it will thrive, flourish, and burst forth

A peaceful feather, a treasured calm, a serene peace from Rongo

Emerging into the world of light, into the world of understanding

A crossing of life indeed!

– Paraone Gloyne

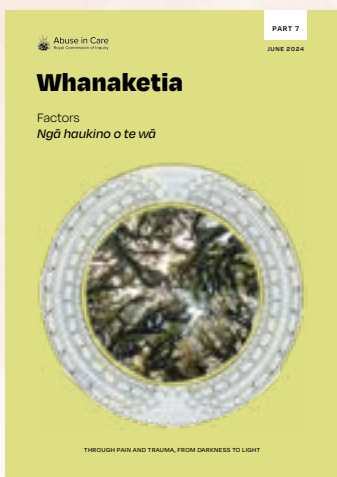
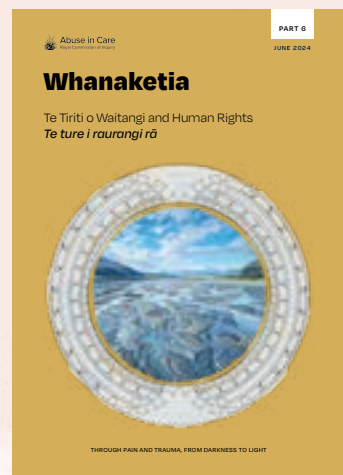
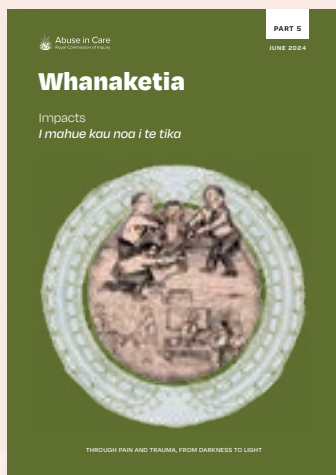
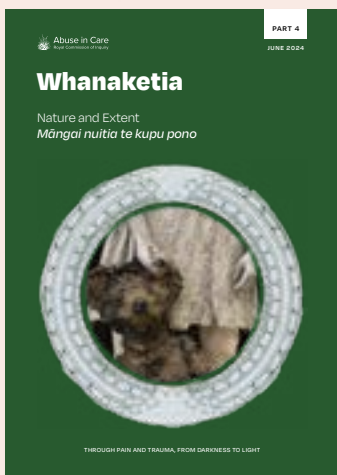
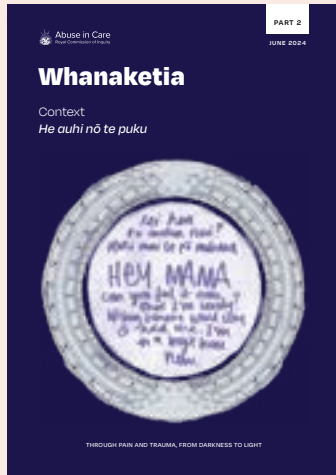


## Whanaketia

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The report is made up of a preliminary, nine parts and five case studies. Whanaketia should be read in full, along with the other reports from the Commission to understand the overall picture of abuse in State and faith-based care from 1950 to 1999.

THROUGH PAIN AND TRAUMA, FROM DARKNESS TO LIGHT





**Abuse in Care**  
Royal Commission of Inquiry