

## **APPENDIX A – SUPPORTING INFORMATION**

### **The Royal Commission of Inquiry into Abuse in Care’s comments about the experiences of survivors of abuse in care amounting to torture**

1. The Royal Commission of Inquiry into Abuse in Care (“the Commission”) has recently described survivors’ experiences at the former Lake Alice Hospital as amounting to ‘torture’ in line with the definitions in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>1</sup>
2. The Commission has further indicated that survivors’ experiences at Marylands School and Hebron Trust may amount to torture, reporting that:<sup>2</sup>

Sexual offending may constitute torture: rape has been recognised as torture where at least one of the purposes for the rape was a prohibited purpose (to punish, to intimidate or coerce, or for a discriminatory purpose), and the rape was committed by or with the consent or acquiescence of a person acting in an official capacity.

3. The Commission further found that: “[a]t both Hebron Trust and Marylands we find ... [t]here is evidence of sexual abuse being used as punishment, as well as to intimidate.”<sup>3</sup>
4. Finally, the Commission reported that “there is evidence ... that disabled children were targeted for abuse.”<sup>4</sup>

### **Inaccessibility of the current redress schemes**

5. Many survivors suffered abuse in multiple placements, and as a result, it is common for survivors to seek redress against more than one agency. Each agency has a different redress scheme and different evidential thresholds for considering allegations, among other differences. Engaging in multiple redress processes at one time is confusing for survivors, especially those who are unrepresented or who suffer from a disability. The multiplicity of these bureaucratic redress processes negatively impacts the accessibility of obtaining redress for all survivors – who are disproportionately Māori and Pasifika, as set out in our submission.

### **The vulnerability of survivors of abuse in care and the retraumatising impact of the current redress schemes**

6. Children in State care often had poor attendance at school, experienced interruptions to their schooling, frequently changed schools, or didn’t attend any schooling while they were in care. This has resulted in survivors having a significantly lower education level than the general population.
7. Survivors are well accustomed, after years of harsh experiences, to having their rights disregarded. The very nature of their claims against MSD demonstrates that most claimants from a very early age learned to mistrust authority, and in particular, the government.
8. The long delays in the State redress processes (some of our clients have waited over 10 years to resolve their MSD claims) are retraumatising for these already

vulnerable survivors, as are the inadequate outcomes available under the schemes.

9. In addition, the current redress schemes are not survivor-focused and end up retraumatising many survivors. Some Government agencies, such as MOE, will often only accept that abuse occurred if there are supporting records available or the perpetrator has been criminally convicted. Approaching redress from this angle makes survivors feel that they are not believed, retraumatising them. Those who reported abuse as children were often not believed, which means they are further being let down by the State.

### **Survivors' access to counselling**

10. Many survivors do not have access to funded counselling. In principle, counselling is available to survivors who have experienced sexual abuse through ACC's Integrated Services for Sensitive Claims.<sup>5</sup> However, not all survivors of abuse in State care experienced sexual abuse. Those survivors who are able to access this counselling face long delays in being appointed a counsellor.
11. We have seen some improvement in this area, namely in the implementation of a scheme through Emerge Aotearoa ("Emerge"), a national charitable trust, that provides wrap-around support to survivors engaged with redress processes in the wider Wellington region.
12. We support the efforts of Emerge, however, the service ultimately falls short of addressing the complex needs of all survivors, particularly due to its geographical limitations.
13. MSD will provide counselling for clients who have engaged in its settlement process. However, a large amount of our clients are currently in prison. Very few counsellors will travel to prisons to meet the clients. This means that despite the six sessions being offered, in practice this is not available to all survivors.
14. Further, MSD requires our clients to engage directly with it to organise counselling. This essentially forces survivors to go to their abuser for support dealing with the effects of the abuse.
15. MOE will also provide counselling to those engaged in its settlement process. Again, while we support this effort, the service is not available to all survivors, so is inadequate.

### **Discrimination in the Youth Justice system**

16. The legislative changes passed in 2019 require residences to uphold the rights guaranteed by Article 37 of the CRC including that the detention of a child "shall be used only as a measure of last resort and for the shortest appropriate period of time" and that:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age ...

## 17. The 2023 'rapid review' found:

There is a lack of therapeutic care and inconsistent participation in formal education and other programmes in residences. The boredom and disengagement that result increase the risk of violence and absconding.

...

There is a profound misalignment between the complex and high needs of the Tamariki and Rangatahi [children and young people] in care and the relatively unskilled – and largely unregulated – nature of parts of the workforce. ...

## 18. Regarding the Government's intention to build two new Youth Justice residences, the 'rapid review' commented:

The secure residences are tired assets that are not conducive to securing good therapeutic outcomes for young people. The current plan for new builds and its alignment to both strategy and the model of care is confused. The agency needs to rethink its asset portfolio, better align it to a differentiated service model and manage it more strategically.

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<sup>1</sup> The Royal Commission of Inquiry (Abuse in Care), *Beautiful Children* (December 2022) at 104.

<sup>2</sup> The Royal Commission of Inquiry (Abuse in Care), *Stolen Lives, Marked Souls* (July 2023), at [308] (footnotes omitted).

<sup>3</sup> At [185].

<sup>4</sup> At [302].

<sup>5</sup> New Zealand's Accident Compensation Commission.