New Zealand Law Society
Te Kāhui Ture o Aotearoa

Redress System for Abuse in Care Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

25 November 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Redress System for Abuse in Care Bill (**Bill**), which seeks to "introduce a presumption against financial redress for 'serious violent or sexual offenders'."

1.2 While the Law Society supports the establishment of a framework that offers an alternative to litigation to access redress for abuse in care, we do not support the proposed presumption against financial redress for certain individuals convicted of serious violent or sexual offences. The presumption gives rise to serious concerns in relation to:

(a) consistency with the findings and recommendations of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (**Royal Commission**), including in respect of;

(i) compliance with New Zealand's international obligations;

(ii) compliance with the Crown's obligations under the Treaty of Waitangi/te Tiriti o Waitangi (**te Tiriti**).

(b) consistency with the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**); and

(c) compliance with the rule of law.

1.3 For these reasons, we recommend the Bill does not proceed in its current form. These issues, which we discuss in more detail below, must be addressed before any statutory redress framework is established.

1.4 Our submission, prepared with input from the Law Society's Criminal Law, Human Rights and Privacy, and Public Law Committees,[1] also makes some recommendations to improve the clarity and workability of the Bill should it proceed despite the concerns raised in this submission.

1.5 The Law Society **wishes to be heard** in relation to this submission.

2 The Bill appears to be the product of an incomplete policy process

2.1 The Law Society notes there is no accompanying Regulatory Impact Statement (**RIS**) with the Departmental Disclosure Statement (**DDS**) stating that these proposals are exempt on the grounds that the "economic, social, or environmental impacts are limited and easy to assess."[2] However, in our view, the consequences of this Bill are complicated and significant (as we discuss in this submission), and require a thorough analysis of their impact.

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1 More about these Committees can be found on the Law Society's website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/.

2 Departmental Disclosure Statement, at [2.3], as per the Cabinet Office circular CO (24) 7: *Impact Analysis Requirements*, at [36.2].

2.2 It is important that a full and considered policy development process is followed before this Bill is passed or enacted. This process should (among other things):

(a) Clearly identify the policy problem that is seen to require the introduction of a presumption against financial redress for individuals convicted of serious violent or sexual offences, and what is considered to be capable of 'bringing the system into disrepute'.[3]

(b) Include a thorough assessment of whether this proposed redress scheme is consistent with the needs and preferences of survivors of abuse in care, the findings and recommendations of the Royal Commission, New Zealand's international obligations, and the Crown's obligations under te Tiriti.

(c) Take into account 'the clearly documented link between abuse in care and later offending, including violent and sexual offending, and the over-representation of Māori in care and the criminal justice system'.[4]

(d) Include meaningful public consultation on the design and policy settings of the redress scheme, and on draft legislation. Public feedback, particularly from those who have experienced abuse in care, or currently in care, and their families, whānau and communities, should inform the design of the redress scheme and any policy settings relating to eligibility.

(e) Include an assessment of how the presumption against financial redress (in this Bill) will likely result in different treatment of survivors of abuse who have been convicted of the qualifying offences. There may be some individuals who have already made claims in substantially similar circumstances and on the other hand there may be some individuals who could have made a claim but have not yet done so due to ongoing delays in obtaining personal files from the redress agencies, or other personal barriers. The latter would currently fall under the presumption against financial redress but have not altered their circumstances albeit through the passage of time.

2.3 These do not appear to have occurred during the design and the development of this Bill.[5] This is a significant departure from best practice for good legislative design and development, and this deficient policy process has likely given rise to some of the concerns relating to this Bill, which we discuss further below.

3 Clause 29.

4 DDS at [3.2].

5 While the presumption against financial redress for some offenders is *referenced* in various documents (for example, in the *Crown response to the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based institutions* (May 2025) at [15]; *Implementation plan to deliver an enhanced redress system for survivors of abuse and neglect in State care* (August 2025)), they do not contain any detailed policy analysis of the presumption against financial redress, or how financial redress for those offenders risks bringing the system into 'disrepute'.

3 Inconsistencies with the Royal Commission's recommendations and findings

3.1 The presumption against financial redress is inconsistent with the recommendation of the Royal Commission that the redress scheme should be open to *all* survivors, including those in prison or with a criminal record.[6]

3.2 A similar recommendation was made by the Redress Design Group, which has noted that:[7]

> Present or past experiences of incarceration and/or conviction should have no effect on the applicant's eligibility for a monetary payment. Overseas, some incarcerated people, or people who have been convicted of certain categories of offences, have been precluded from obtaining monetary redress. Similarly, for a period in Aotearoa New Zealand, people categorised as "High Tariff Offenders" could not receive redress payments.
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> Those practices were unjust. Redress payments are owed to survivors because of what they experienced in care, and how that has affected their lives subsequently. Whether or not a survivor has committed criminal acts is irrelevant to their grounds for eligibility.

3.3 The presumption in the Bill also disregards the Royal Commission's findings regarding the high correlation between abuse in care and subsequent high rates of criminal behaviour, imprisonment, and the membership of gangs, as well as the over-representation of Māori in care and the correlation with subsequent over-representation in the criminal justice system. In its December 2021 report, the Royal Commission observed:[8]

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

3.4 In deeming some individuals ineligible for financial redress, and requiring them to seek financial redress through the courts, the Bill also fails to recognise the Royal Commission's findings that:[9]

> Civil litigation – taking a Crown agency or faith-based institution to court – is in general a stressful, expensive, slow, and adversarial process for survivors of

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6 Royal Commission *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui* (December 2021), recommendation 18.

7 Redress Design Group *High-level design for an effective survivor-led and survivor-centred redress system* (30 November 2023) at page 125.

8 Royal Commission *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui* (December 2021) at 1.2.1.

9 Royal Commission *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui* (December 2021), ch 1.1.5

abuse in care. It is also a route blocked by significant legal barriers, and as such is not currently a viable option for the vast majority of survivors.

3.5 This is despite the Ministry of Justice's advice on the Bill's consistency with the Bill of Rights Act (while noting that litigation still remains an available option) signalling that a 'redress scheme is likely to have procedural and substantive advantages over litigation for an applicant, such as being inexpensive, relatively simple to access, private, and less uncertain of outcome, which may make it a more attractive option than seeking a remedy through the courts.'[10]We query whether such a policy response is consistent with the overarching objective of the Royal Commission's recommendations to 'address the wrongs of the past', including by providing redress for abuse and neglect in care, and by acknowledging victim and survivor experiences.[11]

3.6 Officials have also advised that this proposal 'sits in tension' with the objectives for redress that Cabinet previously agreed on – these include:[12]

(a) delivering accountability for survivors that acknowledges the harm survivors experienced and further obligations to prevent future abuse in care;

(b) supporting improved outcomes for survivors – which could, depending on a survivor's circumstances and preference, encompass improved quality of life, and the ability to more fully participate in all aspects of community, social, cultural, and economic life;

(c) contributing to reducing the negative social, cultural, and economic costs arising from the poor outcomes experienced by survivors as a result of the injury and trauma caused by abuse.

3.7 The Law Society recommends the Select Committee carefully consider whether the Bill is an appropriate response to the Royal Commission's findings and recommendations.

Consistency with New Zealand's international obligations

3.8 The Royal Commission's December 2021 report also discusses the various international treaties and instruments which recognise human rights, and the right to redress for violations of human rights.[13] These include:

(a) Article 2(3) of the Universal Declaration of Human Rights;

(b) Article 8 of the International Covenant on Civil and Political Rights;

(c) Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination;

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10 Ministry of Justice *Consistency with the New Zealand Bill of Rights Act 1990: Redress System for Abuse in Care Bill* (2 October 2025) at [11] (**Bill of Rights Advice**).

11 Royal Commission *Whanaketia – Through pain and trauma, from darkness to light Whakairihia ki te tihi o Maungārongo* (2024).

12 Office of the Lead Coordination Minister for the Government's Response to the Royal Commission's Report into Historical Abuse in State Care and in the Care of Faith-based Institutions *Access to Redress for Survivors of Abuse in State Care with Convictions for Serious Violent and Sexual Offending* at [7] and [9].

13 Royal Commission *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui* (December 2021) at page 72.

(d) Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and

(e) Article 40 of the Declaration on the Rights of Indigenous Peoples.

3.9 The DDS notes these international obligations were considered during the policy development phase.[14] However, details of this assessment do not appear to have been made publicly available. The DDS also acknowledges the Bill 'will limit access to financial redress for some survivors of abuse in care' and that this may 'attract criticism from international bodies, such as the Human Rights Committee and the United Nations Committee Against Torture, for apparent inconsistencies with New Zealand's international obligations relating to the safeguarding of the right to an effective remedy'.[15] There is no further discussion about these 'apparent inconsistencies', and what safeguards are in place to ensure that, if this legislation is enacted, New Zealand does not breach its international obligations.

3.10 The DDS concludes by noting these 'apparent inconsistencies' with New Zealand's international obligations, are addressed by the fact that survivors of abuse in care will still be able to access other types of redress, and seek redress through the courts.[16] However, this fails to take into account the fact that the very purpose of this Bill is to offer an *alternative* to litigation, and that other types of redress (such as an apology or well-being support) may not provide an adequate or appropriate level of redress for the harm suffered by the applicant.

3.11 We recommend the Select Committee seek further advice from officials about these matters, and carefully assess whether the framework in this Bill is consistent with New Zealand's international obligations. The Royal Commission's December 2021 report, *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui*, discusses these obligations, and will provide a useful starting point for the Committee's assessment.[17]

Consistency with the Crown's obligations under te Tiriti

3.12 In addition to New Zealand's international obligations, the Royal Commission also signalled that the Government has obligations under te Tiriti to provide redress in many cases of abuse of care. These obligations are considered in detail in the Royal Commission's December 2021 report,[18] which notes that the principles of partnership, good faith, active protection and equity are engaged, and 'are relevant to any assessment of the tūkino that must be put right, the nature of puretumu torowhānui, or holistic redress, and restoration that must be provided, and the process by which any puretumu torowhānui scheme is designed and delivered'.[19]

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14 At [3.1].
15 Ibid.
16 Ibid.
17 Royal Commission *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui* (December 2021) at 1.4.
18 Royal Commission *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui* (December 2021) at 1.4.
19 Royal Commission *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui* (December 2021) at page 70.

3.13 The DDS notes the Crown Response Office has analysed the policies in the Bill for consistency with te Tiriti, and concludes:[20]

> It is anticipated that the presumption against financial redress will disproportionately impact Māori, given the clearly documented link between abuse in care and later offending, including violent and sexual offending, and the over-representation of Māori in care and the criminal justice system. Consequently, the proposal may engage Article Three of the Treaty of Waitangi as it may not achieve equitable outcomes.

3.14 There is no further discussion of whether the policy settings should be adjusted to address these problems and to ensure the resulting statutory framework upholds the Crown's obligations under te Tiriti. As currently drafted, the Bill is likely to be inconsistent with these obligations.

3.15 We also note the Royal Commission has identified 'failings' in previous redress systems, which included redress processes not being developed with regard to te Tiriti o Waitangi, and not recognising the mana of survivors or offering genuine support for survivors to heal their lives.[21]

3.16 We therefore urge the Select Committee to seek further advice from officials about whether this new framework, and its development, is consistent with te Tiriti, and to consider what amendments are needed to ensure this redress scheme operates in a way that meets the Crown's Treaty obligations.

4 Bill of Rights Act concerns

4.1 The Bill establishes, at clause 9, the legal presumption that survivors of abuse in state care who have been convicted and sentenced to five years' or more of imprisonment for serious sexual or violent offending are ineligible to receive financial redress through the redress scheme. Clause 19 permits a redress officer to nonetheless allow financial redress to these survivors if doing so would not bring the scheme into disrepute, by reference to the matters listed in clause 20.

4.2 The Law Society considers this presumption would limit the affected survivors' right not to be punished twice. The Bill of Rights Act sets out this right at section 26(2):

> No one who has finally been acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.

4.3 If the Bill proceeds, it will significantly affect the civil rights and interests of survivors of abuse in state care who have criminal convictions of a particular severity. The express link between ineligibility for financial redress and a qualifying criminal conviction and sentence may reasonably be regarded as punitive in nature.[22] While the discretionary mechanism to readmit individuals to eligibility on a case-by-case basis is relevant to

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20 At [3.2].

21 Royal Commission *Whanaketia – Through pain and trauma, from darkness to light Whakairihia ki te tihi o Maungārongo* (2024) at 463.

22 Courts have regarded statutory provisions treating a criminal conviction as a "trigger" for another legal consequence as a strong indicator that the measure amounts to a penalty: *Belcher v Chief Executive of the Department of Corrections* CA184/05, 19 September 2006; *D (SC 31/2019) v Police* [2021] NZSC 2.

justification, it does not alter the underlying presumption of ineligibility or its operation as a penalty. This raises serious proportionality and human rights concerns, as the measure imposes an enduring restriction on access to redress that may not be justified by the original offending.

4.4 Given the explicit link between criminal conviction and ineligibility for financial redress, it is surprising that section 26(2) was not addressed in the Bill of Rights advice. Redress schemes are administrative arrangements to facilitate redress including compensation (as an alternative to litigation) and ex gratia payments (where there is no cause of action). Eligibility parameters can be drawn and amended by Cabinet and relevant agencies. There is no requirement that the parameters of the redress schemes be set out in legislation, and the Bill does not aim to do so except in respect of this particular exclusion. The Law Society is of the view, given the lack of information available about the policy development process the formation of this Bill undertook, that the apparent reason for this is that a non-statutory limit on offender eligibility would be vulnerable to legal challenge on the basis of inconsistency with section 26(2) of the Bill of Rights Act.

4.5 We acknowledge that section 26(2) of the Bill of Rights Act is capable of limitation under section 5 of that Act. The starting point of any assessment is to ascertain the purpose of that limit and whether it is sufficiently important to justify the limitation of the engaged right or freedom. The stated statutory purpose is to avoid bringing a redress scheme into 'disrepute'. The underlying rationale appears to be that providing financial redress to survivors of abuse who later commit serious offending could be perceived as undermining public confidence in the scheme, which may in turn affect its long-term viability. It is unclear whether this perception-based concern is supported by evidence or whether the proposed restriction is proportionate to the risk identified.

4.6 We note that purposes expressly grounded in public opinion are inherently suspect reasons for limitations on fundamental rights. In *Attorney General v Chisnall,* the Supreme Court adopted the following description (drawn from a Canadian Supreme Court case) of the justificatory burden on the Crown:[23]

> [127] … the infringing measure must be justifiable by the processes of reason and rationality. The question is not whether the measure is popular or accords with the current public opinion polls. The question is rather whether it can be justified by application of the processes of reason. In the legal context, reason imports the notion of inference from evidence or established truths. This is not to deny intuition its role, or to require proof to the standards required by science in every case, but it is to insist on a rational, reasoned defensibility.
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> [128] … the state must show that the violative law is "demonstrably justified". The choice of the word "demonstrably" is critical. The process is not one of mere intuition, nor is it one of deference to Parliament's choice. It is a process of demonstration. This reinforces the notion inherent in the word "reasonable" of rational inference from evidence or established truths.

4.7 Nor does any evidence suggest that the restriction on financial redress for some survivors is rationally connected with the purpose of maintaining public confidence in a

[23] *Attorney-General v Chisnall* [2024] NZSC 178, at [182] per Winkelmann CJ, quoting *RJR-MacDonald Inc v Canada (Attorney-General)* [1995] 3 SCR 199, at [127]-[128].

redress system. Amongst the multitude of issues that have so far been identified with the Crown's present and historical approach to redress for survivors of abuse in care, the provision of redress to survivors who have gone on to offend does not appear to have been seriously contemplated as an issue undermining public confidence in the response to claims of abuse. It appears that, at most, there have been individual instances of media attention.

4.8 The limitation of a protected right must also be proportionate. It is doubtful that this limitation meets proportionality requirements if maintaining public confidence in the scheme can be achieved through alternative measures that do not restrict section 26(2), or if a less restrictive approach could be implemented. In our view, avoiding 'disrepute' can be achieved in a less rights-limiting way by enabling application of the Prisoners' and Victims' Claims Act 2005. This is discussed in more detail below at [7.54] - [7.57]. Using this approach, all survivors of abuse in care would be eligible for financial redress, but the risk that the redress is seen as a financial 'windfall' for a serious offender would be lessened through the ability to use that redress to meet the legal obligations arising from that individual's offending.

4.9 The alternative of civil litigation remains open to all survivors of abuse in state care. However, civil litigation is not always a viable alternative process even if there is a legal right to seek compensation, given the passage of time and the impact of limitation periods. Ex gratia payments are also paid through redress schemes which is a form of financial redress that cannot be sought through civil litigation.

4.10 Given the concerns outlined above, the Law Society does not agree that the Bill is consistent with the Bill of Rights Act, and recommends that the Select Committee seek further advice from officials on this issue.

5 The retrospective provisions in the Bill raise rule of law concerns

5.1 Clause 8 provides that clauses 9 to 24 of the Bill (which, among other things, sets out the presumption against financial redress for individuals convicted of serious violent or sexual offences) will apply to applications for financial redress lodged on or after 9 May 2025. As the DDS notes,[24] this means the presumption against financial redress for some survivors with serious sexual and violent convictions will apply retrospectively to applications for financial redress that were lodged on or after 9 May 2025 and before the legislation is enacted.

5.2 Retrospective legislation is generally undesirable because it can reduce certainty and predictability of the law, and in doing so, weaken the rule of law. Good reasons are therefore required to justify departing from the presumption against retrospectivity in order to avoid infringing the rule of law (for example, where the retrospective provisions are intended to be entirely to the benefit of those affected).[25]

5.3 That does not appear to be the case here, as the materials supporting the Bill do not offer good reasons to justify the retrospective application of clauses 9 to 24. For example, they do not explain why the date of 9 May 2025 is of any relevance or significance to the

24 At [4.3].

25 Legislation Design and Advisory Committee *Legislation Guidelines* (2021) at 58.

reputation of the redress scheme when compared to a date which falls after the enactment of this legislation (bearing in mind, for example, that the presumption is rebuttable, and other eligibility criteria are to be published after enactment).[26] Absent this justification, the Bill draws an arbitrary distinction between individuals who submitted their application before 9 May 2025, and those who did so after that date. This is inconsistent with the purpose of the redress scheme to recognise a person's experience of abuse in care, and to offer an alternative to litigation for those seeking redress.

5.4 In acknowledging the retrospective application of clauses 9 to 24, the DDS suggests 'claimants that have serious sexual or violent convictions will be, or ought to be, aware of a potential limitation on their ability to receive financial redress' because the presumption against financial redress was publicly announced on the Beehive website.[27] In our view, this gives improper weight to a public statement made by the Executive. The suggestion that such a statement can have the effect of changing or prescribing the law (a constitutional function which sits with Parliament) blurs the separation of powers between the Executive and Parliament, and undermines the principle of Parliamentary Sovereignty – both of which then undermine the rule of law.

5.5 The fact of that statement also does nothing to ameliorate what is objectionable about the retrospectivity, and short of pursuing litigation instead, those affected could do nothing to prepare for or address the consequences of the announced policy.

5.6 The 'rationale' for retrospectivity also fails to take into account the fact that affected individuals who were serving their sentence at the time of the Beehive announcement are unlikely to have been made aware of the announcement (for example, because they will not have had internet access to visit the Beehive website). It is also unlikely affected individuals would have known to look for information regarding eligibility for financial redress on the Beehive website.

5.7 If there are to be eligibility criteria or other restrictions on accessing any type of redress, these should have only prospective effect, and their effect should be limited to applications made after their commencement.

Convictions captured by the Bill

5.8 The position on convictions received prior to 9 May 2025, and whether the Bill applies retrospectively to include such convictions within the scope of clause 9, is not clear. Given the rights implications discussed above, any such intention should be explicit within the Bill.

5.9 The inclusion of prior convictions would also raise further concerns. Judges would not have been aware, at the time of sentencing, of the implications of imposing an imprisonment term of five years or more. Noting our view above that the Bill engages section 26(2) of the Bill of Rights Act, this would be a relevant consideration for the Judge. Alternatively, a Judge may have been finely balanced on whether to impose a term

26 Clause 12.
27 At [4.3].

of, say 4 years and 11 months imprisonment, versus 5 years imprisonment. The consequences of this Bill may have been a relevant consideration here, too.

5.10 Decisions as to concurrent or cumulative sentencing would also have an impact. For example, an offender being sentenced to 4.5 years for 'wounding with intent,' and 1 year for an unrelated burglary. If a concurrent approach is adopted (5.5 years for wounding with intent, 1 year concurrent on the burglary conviction), the offender would be subject to the presumption against financial redress. If sentencing cumulatively (4.5 years for wounding with intent, 1 year cumulatively for the burglary conviction), the offender would remain eligible.

5.11 Further, those now affected (if the Bill applies to prior convictions) would not at the time have known of these implications. This may have altered arguments made at sentencing or influenced whether they accepted indicated sentencing upon guilty plea.

5.12 As the above illustrates, sentencing is a highly complex process. Capturing convictions prior to this Bill therefore exacerbates rights concerns. We recommend the Bill is amended to explicitly specify that it applies to convictions received post-commencement.

6 Impact on court delays

6.1 It is unclear whether the Bill's impact on court delays has been assessed.

6.2 The Law Society considers it likely that, given the consequences of a five-year sentence for an offender who suffered abuse in care and has a pending compensation claim, the Bill will lengthen criminal proceedings. At least two scenarios could contribute to delays in the criminal context:

(a) Where a defendant receives a sentence indication suggesting a term of five years or more, accepting that indication would jeopardise their ability to make a compensation claim. This is likely to result in defendants declining sentence indications and proceeding to trial, increasing pressure on court schedules.

(b) Where a defendant has an active compensation claim alongside criminal proceedings that may result in a sentence of five years' or more, they may delay entering a plea until the compensation matter is resolved, prolonging the criminal process.

6.3 Overall, the dynamics at play risk aggravating systemic delays across the criminal justice system, thereby increasing case backlogs.

6.4 In offering no alternative to litigation for those who are barred from accessing financial redress under this scheme, the Bill is also likely to result in an increase in civil proceedings. As the DDS explains,[28] those who cannot access financial redress will have no option but to seek remedies through the court: this will inevitably add to the courts' workloads, and compound existing delays and backlogs.

6.5 The Law Society recommends the Select Committee seek advice from officials on the impact the Bill will have on the issue of court delays.

28 At [3.1].

7 Drafting issues and recommendations to improve clarity and workability

7.1 In light of the concerns noted above, we do not recommend the Bill proceed in its current form. Further policy work must be undertaken, and amendments must be made to the Bill to address the concerns identified.

7.2 However, if the Select Committee considers the Bill should nevertheless proceed, without further policy work, we make the following recommendations to improve the clarity and workability of the Bill, and to safeguard against biased and/or unreasonable decisions.

Clause 5 – Definitions of 'criminal record' and 'criminal record check'

7.3 It is unclear whether 'criminal records' and 'criminal record checks' (both defined in clause 5 of the Bill), include only New Zealand records, or whether they also include overseas records. The concerns expressed in the Bill about bringing the redress scheme into disrepute suggest the intention is for these records to include only New Zealand records.[29]

7.4 However, we suggest the Select Committee to seek further advice from officials on this point. If the intention is for these terms to also include overseas convictions, we recommend:

(a) clearly articulating the policy reasons for including overseas convictions, and assessing how they help achieve the underlying policy objectives. This should also consider that sentencing regimes differ internationally. While the Bill is premised on New Zealand's current sentencing standards, a period of five years' imprisonment in other jurisdictions (especially those with mandatory minimums) could be applied for comparatively minor offences, not intended to be captured;

(b) assessing whether such interpretations are consistent with the Bill of Rights Act, New Zealand's international obligations, and with the Crown's obligations under the Treaty of Waitangi; and

(c) if there are no inconsistencies, amending these definitions to expressly note that the terms 'criminal record' and 'criminal record check' include overseas convictions.

Clause 10 – Minister must appoint redress officer

Appointment of redress officers

7.5 The Bill is silent on the mechanics of these appointments – there are, for example, no provisions:

(a) requiring redress officers to be independent and unaffiliated with any redress agency (as discussed at [7.10] - [7.11] below);

(b) setting out the manner of appointment, notification of appointments, the term of each appointment, or vacation of office;

29 Clause 19 and Explanatory Note.

(c) prescribing the date by which these appointments must be made to enable the operation of the scheme; and

(d) confirming that information held by the redress officer is subject to the Official Information Act 1982.

7.6 We recommend the Select Committee seek officials' advice on these issues, and expressly address these matters in the Bill.

Eligibility for appointment as redress officer

7.7 Clause 10 of the Bill sets out the criteria a person must meet to be considered for appointment to the redress officer position, and clause 11 provides the function and duty of the redress officer.

7.8 At clause 10(b)(iv), the requirements include sensitivity to, and understanding of, the impact of crime on victims (as defined in section 4 of the Victims' Rights Act 2002). However, we note that a similar requirement for sensitivity to, and understanding of, the impact of abuse in care on survivors of that abuse is missing. We consider it a major drafting error not to include a similar requirement as part of the eligibility criteria of a redress officer and recommend the insertion of such a requirement in this context. This is not remedied by the alternative wording inserted at clause 10(b)(iii) ("the ability to work effectively with people who have experienced abuse in care") and minimises the impact of the abuse on survivors of abuse in state care.

7.9 At clause 10(b)(ii), there is a requirement to have the ability to make a balanced and reasonable assessment of 'community expectations'. However, we note that there is no definition of what community expectations means, nor any provision allowing for ways in which the redress officer can ascertain what the community expectations are. We consider this to be problematic for accurate depiction of what is meant by the term 'community expectations' and how such information could be obtained in their capacity as the redress officer.

7.10 We also note that, while redress officers are required to 'act independently',[30] there is no requirement for them to be independent of any agency that is operating a redress scheme. As currently drafted, the Bill would permit, for example, a legal advisor employed by a redress agency, who has more than 7 years' legal experience, to serve as a redress officer. In such circumstances, the requirement to 'act independently' is unlikely to address concerns about actual or perceived conflicts of interest, and independent judgment as to whether it is appropriate to overturn the presumption against financial redress in each case. Given the appointees contemplated by clause 10(1)(a)(i) and (ii), it seems unlikely that clause 10(1)(a)(iii) is intended to be used in this manner, however it could be possible on the present drafting.

7.11 We recommend the Select Committee seek advice from officials about the issue and consider amendments that address these concerns. A requirement that the redress officer is independent of the redress agency, should be included.

30 Clause 11(2).

Number of redress officers

7.12 The Bill provides for the appointment of a single redress officer to determine whether applicants are eligible for financial redress despite the presumption in clause 9. It is likely that more than one officer would need to be appointed to ensure the scheme remains workable (noting that clauses 10(b) and 11(2) also require that, in addition to the principles of natural justice, the redress officer should not have a conflict of interest or conflict of duties with the applicant or the redress agency).

7.13 The variety of applications that can be expected under this scheme could otherwise present difficulties with identifying a single candidate for the redress officer position who meets all of the appointment criteria in relation to all applications for redress (including applications that will not have been filed at the time of the appointment of the redress officer).

7.14 We recommend amending the Bill to require the Minister to appoint at least one, and no more than a prescribed maximum number of redress officers. This would require amendment of clauses 5 (i.e., the definition of 'redress officer'), 10 and 11 in particular, and consequential amendments to the remainder of the Bill.

Clause 11 – Functions and duties of redress officers

7.15 Clause 11 provides the function of the redress officer is to determine whether an applicant should be entitled to receive financial redress despite the presumption against serious violent or sexual offenders being eligible to receive financial redress. However, the Bill does not explain how the redress officer is expected to carry out this function – for example:

(a) Will the redress officer be able to access and consider other materials that may be relevant to whether an applicant should be eligible for financial redress (noting the Bill only empowers the redress officer to access information held by a court, the Department of Corrections, or the Parole Board)?[31]

(b) Will they be able to seek additional information from the applicant? If so, could the redress officer request additional information directly from the applicant, or should such requests go through the redress agency?

(c) Should the redress agency be required to provide *all* information held by the agency in relation to the applicant (noting clause 18(2) of the Bill only requires an agency to provide 'all information held by the redress agency in relation to the criminal record check on the applicant under section 15')?

(d) Can the redress officer talk to the applicant (for example, to ask questions, or to better understand points raised in submissions provided by the applicant under clause 20(1))?

(e) Would applicants be able to engage directly with the redress officer considering their application (for example, if they wish to provide further information, or wish to clarify points they have raised in written submissions)?

[31] Clauses 17(2) and 20(2).

(f) Can the applicant make oral submissions to the redress officer under clause 20(1)?

(g) Is the redress officer required to make a determination under clause 20?

(h) What safeguards are in place to ensure the applicant's rights to natural justice are upheld during the process to determine whether an applicant is eligible for financial redress?

7.16 These matters must be addressed in the Bill to ensure transparency around how the scheme operates, and to ensure redress officers are able to make informed decisions as to whether applicants should be eligible for financial redress. In our view, it would not be appropriate to address these matters in other operational or policy documents.

Clauses 11, 19 and 20 – Consideration of the level of financial redress

7.17 Clauses 11, 19 and 20 of the Bill provide that the redress officer must determine whether financial redress should be made available to an individual convicted of a serious violent or sexual offence.

7.18 The drafting of these provisions suggest the redress officer has a binary choice of determining whether or not a person should be entitled to receive financial redress – that is, financial redress should or should not be made available to that person. This oversimplifies the reality (recognised in clause 20(4) of the Bill) that the level of financial redress, if any, might also be relevant to the decision of whether it should be made available to that person. Enabling the redress officer to take the level of financial redress into account would also be consistent with the purposes of the redress scheme (outlined in clause 4).

7.19 We recommend the Select Committee seek advice from officials on whether the redress officer can make a decision that might be qualified in relation to a particular level or band of redress.

Clause 12 – Publication of eligibility criteria for redress

7.20 Clause 12 requires the chief executive of a redress agency to publish the eligibility criteria for all redress schemes operated by their agency. We recommend amending this clause to clarify the date by which such criteria must be published. Specifying this date in the legislation would provide greater certainty as to who can access redress under a particular scheme (and we note such an amendment could be particularly helpful for prospective applicants).

Clause 14 – Obligation to disclose subsequent convictions

7.21 Clause 14 requires an applicant who is convicted of a violent, sexual, or firearms offence after making an application for financial redress 'but before redress is granted' to disclose that conviction to the redress agency as soon as possible.

7.22 Given this provision relates to an application for financial redress, we recommend amending the phrase 'before redress is granted' (in the second line of clause 14) to 'before ***financial*** redress is granted'. The current drafting would otherwise

inappropriately tie the proposed disclosure obligation to other types of redress sought by the applicant. For similar reasons, we recommend amending the term 'before redress is granted' in clause 24 to 'before ***financial*** redress is granted'.

7.23 We also note that clause 14 creates an ongoing disclosure obligation from when an application for financial redress is made until redress is granted. This, in light of the reapplication process provided in clause 21 (which the applicant may, or may not choose to undertake after the three-year stand-down period[32] lapses), could create a very long ongoing obligation to disclose information.

7.24 The Ministry of Justice's advice on the Bill's consistency with the Bill of Rights Act notes:[33]

> The purpose of these requirements is to ensure that information that is relevant to an applicant's eligibility for financial redress is available when the application is assessed. We consider this objective to be sufficiently important to justify some limit on the right to freedom of expression.

7.25 Such an obligation may not be justified in circumstances where the applicant chooses not to reapply for financial redress under clause 21. Should an applicant decide to reapply, the disclosure regime would commence again, so the policy intention of these clauses could be achieved without this ongoing disclosure obligation.

7.26 At [7.49] - [7.52] of this submission, we recommend deleting clause 14. If the Select Committee does not accept this recommendation, we alternatively recommend amending this clause to clarify that the disclosure obligation applies only until the earlier of the following:

(a) a decision is made under clause 19 that financial redress should not be made available to that person; or

(b) financial redress is granted to the applicant.

7.27 Clause 24 would also require consequential amendments.

Clause 16 - The labelling of an applicant as 'a serious violent or sexual offender'

7.28 Clause 16 of the Bill labels some individuals who are seeking financial redress for abuse in care as 'serious violent or sexual offenders'. This label defeats the purposes of the redress scheme to:

(a) recognise a person's experience of abuse in care,[34] by labelling the applicant as someone other than a person who says they experienced abuse in care; and

(b) offer an alternative to litigation to provide for redress for abuse in care,[35] by requiring those who are ineligible for financial redress to seek financial redress through the courts.

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32 Clause 21(2).

33 Ministry of Justice *Consistency with the New Zealand Bill of Rights Act 1990: Redress System for Abuse in Care Bill* (2 October 2025) at [17].

34 Clause 4(a).

35 Clause 4(b).

7.29 In our view, this label is inappropriate and unnecessary, particularly in the context of:

(a) the purposes of sentencing in section 7 of the Sentencing Act 2002;

(b) the operation of the broader criminal justice system;

(c) the link between abuse in care and later offending, and the over-representation of Māori in the care and criminal justice systems;[36] and

(d) the factors set out in clause 20(4) of the Bill,

and may lead to revictimisation of the survivor by the redress agency.

7.30 We therefore recommend:

(a) Changing the language in clause 16 to 'a person [or an individual] who has been convicted of a serious violent or sexual offence' (noting this is the term used in the Explanatory Note of the Bill).

(b) Amending clause 5, which defines the term 'serious violent or sexual offender', to reflect the revised drafting in clause 16 – i.e.:

> **convicted of a serious violent or sexual offence**, in relation to a person [or an individual], refers to a person [or an individual] who—
>
> (a) has been convicted of an offence listed in Schedule 1AB of the Sentencing Act 2002; and
>
> (b) has received a sentence of a term of imprisonment of 5 years or more in relation to that offence (whether or not that sentence was also imposed in relation to any other offence)'.

(c) Making consequential amendments to the remainder of the Bill to reflect the amendments to clauses 5 and 16.

7.31 We also note that clauses 13(b), 14 and 24 currently refer to individuals who have been convicted of a 'violent, sexual, or firearms offence'. It is unclear why 'firearms offences' are expressly referenced in these clauses, given those who are convicted of firearms offences listed in Schedule 1AB of the Sentencing Act, and receive a sentence of a term of imprisonment of 5 or more years, will still come within the phrase 'convicted of a serious violent or sexual offence' (or the phrase 'serious violent or sexual offender' that is currently used in the Bill). The term 'firearms offence' is also undefined in the Bill, and its inclusion could raise questions as to what offences come within the scope of the presumption against financial redress and related disclosure obligations. The amendments we have recommended at [7.30] above will address these drafting issues.

Clause 16 – 'determination' that person is a serious violent or sexual offender

7.32 Clause 16 states that if the redress agency 'determines' that a person is a serious violent or sexual offender, the redress agency must notify the person of the matters specified in subclauses (a) to (c). On its face, this drafting (and in particular, the term 'determines') could suggest the redress agency has the authority to determine whether or not a person

[36] DDS at [3.2].

is a serious violent or sexual offender. We presume this is unintentional, as this is a matter for the courts. We therefore recommend amending clause 16 as follows:

> If a criminal record check in respect of a person who has applied for financial redress shows that the person has been convicted of a serious violent or sexual offence, the redress agency must notify the person that—

Clause 17 – Information for the redress officer

7.33 Clause 17 provides that an individual convicted of a serious violent or sexual offence may request that the redress agency refer their application for financial redress to the redress officer for a determination under clause 19. Subsection (2) requires consent for the redress officer to seek certain information for consideration in the determination of whether financial redress should be made available to the person.

7.34 The information listed in subsection (2) includes:

(a) Sentencing notes;

(b) Parole board decisions;

(c) Any relevant Corrections information.

7.35 The Law Society considers the list incomplete. There is no inclusion of other relevant information which may be applicable and appropriate to review during the consideration of whether an offender should be eligible for financial redress. For example, decisions of the court determined on an appeal against sentence. This information will not always be readily available in the public domain and suppression orders may have required redaction of parts of the judgment.

7.36 Accessing such information, however, is not for the claimant to determine via consent. This would typically be determined through the relevant access to court document rules.[37] However, where suppression orders exist, additional problems accessing such material may be encountered. We suggest the redress officer may require additional powers to apply to the relevant courts for suppression or redaction to be lifted solely for the redress officer's consideration of the application.

7.37 Further, appropriate safeguards and criteria around what factors a redress officer must consider in making their determination are not included. This is necessary where potentially different redress officers may be making decisions independently of one another. Without clear mandatory minimum criteria, redress officers may make inconsistent decisions, succumb to external pressures (whether consciously or subconsciously), fail to consider appropriate criteria, or fail to account for the reasons they use in making their determination. This would leave their decisions open to adverse judicial review, and in our view, potentially cause disrepute to the redress scheme itself. In our view, relevant criteria should include:

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37 Relevantly, Senior Courts (Access to Court Documents) Rules 2017 and District Court (Access to Court Documents) Rules 2017.

(a) Age of offender at the date of the applicable offence. It is clearly acknowledged that offending that relates to a young person (even at 18 – 25) is different due to brain development, and it could be more likely to be close in time to the abuse.

(b) The offences which led to the 5-year sentence. Where a cumulative sentence included offences that do not fall within Schedule 1AB, it should be relevant to the determination for financial redress, despite the definition of 'serious violent or sexual offender.' The sentence may only have tipped over into qualifying due to additional very minor charges.

(c) Rehabilitative efforts. Clause 21 contemplates rehabilitation as a consideration post-first application, and it must be accepted that this should form part of the assessment criteria for the first application as well.

(d) Time since conviction.

(e) Whether it is the only conviction.

(f) Circumstances of the offending.

(g) Steps taken to better themselves.

(h) Reports on the relevance of abuse to the offending behaviours.

7.38 The Law Society recommends that careful drafting of suitable provisions for access to all necessary material, and minimum mandatory criteria to be used in the determination of whether the presumption should be overturned, be added.

Clause 19 – Redress officer to assess whether serious violent or sexual offender should be eligible for financial redress

7.39 Clause 19 sets out the requirement for the redress officer to determine whether financial redress should be made available to that person. Subclause (2) adds that the redress officer may only make such a determination if satisfied that the payment of financial redress to that person would not 'bring the redress scheme into disrepute.'

7.40 It is unclear what is likely to bring the redress scheme into disrepute (noting the Bill and related material do not discuss this in any detail). The Bill does not include a definition of what this term means. While the term 'disrepute' is currently referenced in other legislation,[38] those provisions relate to circumstances where there is a risk of bringing a particular *profession* into disrepute. Any existing guidance on the meaning of this phrase is therefore unlikely to assist here.

7.41 The term is highly subjective, and what it means, if not clarified in the Bill, is to be determined by a redress officer. We recommend clarifying what is intended by this phrase in the Bill.

38 For example, s 241 of the Lawyers and Conveyancers Act 2006 and s 103 of the Legal Services Act 2011.

Clause 20 – Notification following determination

7.42 Whilst clause 20 includes a requirement for the redress officer to notify the serious or violent offender of their determination,[39] there is no requirement for the notification to be in writing, or to give reasons as to why overturning the presumption would 'bring the system into disrepute' in the applicant's case.

7.43 Although judicial review of the decision is possible, it would be challenging to contest a decision if the reasons behind it are not disclosed. As mentioned previously at [7.46], this lack of clarity makes reapplication difficult. The applicant would be unable to determine whether it is worthwhile to reapply or how to address the improvements the offender has made to enhance the chance of success in a future application.

7.44 We recommend amending clause 20(5) to include the reasons why the decision was made not to overturn the presumption, and that the notification should occur in writing. We note that such a requirement would be consistent with the rights recognised by section 23 of the Official Information Act 1982 to be given access to reasons for decisions affecting that person.

Clause 21 – Ability to reapply for financial redress

7.45 Clause 21 sets out that an individual convicted of a serious violent or sexual offence may reapply for financial redress once after a minimum of three years since the date of determination that they were not eligible for financial redress, unless the scheme is being wound up, in which case they may reapply before the scheme is wound up.

7.46 Whilst we are supportive of the ability to reapply, it is unclear what the purpose of this proposed section is. If the basis of the ability to reapply is the length of time since conviction, and rehabilitation efforts made, then we recommend acknowledgement of this purpose in proposed section 21.[40] Acknowledgement of factors that may make a difference to the outcome of a second application would also likely have a positive impact on an offender's motivation for rehabilitation, improve recidivism rates, and enable the offender to address the steps they have taken since their last application.

7.47 Along with the adoption of the recommendation made at [7.44] to provide the initial determination and reasons for it in writing to the offender, we consider such a change would enable more fulsome directed applications, improve applicants' chances of success upon reapplying, and improve the integrity of the redress scheme if the Bill proceeds.

7.48 Further, we consider the limitation of the ability to reapply only once to be unduly restrictive. We acknowledge the inclusion of a stand down period between applications of three years, and the need to apply some limitation to the ability to reapply. However, the Law Society recommends that consideration should be given to allowing a right of application for leave to apply at least a further (i.e., third) time, in specific circumstances. This could include circumstances where, for example:

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39 At clause 20(5).

40 As is suggested by the DDS at [4.6].

(a) an initial application was flawed because an applicant tried to complete it themselves without assistance and they subsequently wish to reapply with a lawyer's assistance; or

(b) there has been a significant passage of time since the last offending since the person's last application; or

(c) the person has made a genuine effort to undertake rehabilitation, for example, to recover from alcohol or drug addiction (where that contributed to the offending).

Clauses 23 and 24 – Offence provisions

7.49 Clause 13(a) *requires* an applicant for financial redress to consent to a criminal record check being undertaken by the redress agency. Clause 15 empowers the redress agency to conduct said criminal record check in respect of the applicant.

7.50 Given these provisions, it seems unnecessary and unduly punitive to also include the strict liability offence provisions in clauses 23 and 24, and the requirement to disclose a subsequent conviction in clause 14. If an individual is to be required to consent to a criminal record check, then appropriate steps should be taken by the redress agency to conduct that check, rather than relying on strict liability offences and an applicant's ability – in the highly sensitive and challenging circumstances of making a claim – to navigate statutory terms and definitions.

7.51 Further, if the present drafting referring to 'violent, sexual, or firearms' offences is not amended as recommended above, applicants will have insufficient clarity around which convictions must be disclosed.

7.52 We recommend that clauses 14, 23 and 24 be deleted.

Clause 25 – Effect of apology on liability

7.53 The DDS and Explanatory Note both state that clause 25 is intended to apply to apologies made by "core State agencies as a part of providing redress for abuse in care." However, the clause is drafted more broadly than this, and could apply to apologies made by private individuals, outside of the redress scheme. Statutorily precluding the use of such information in civil proceedings would be an overreach and not appropriate – the admission of such evidence is a matter that properly lies with the Court.

Relationship with the Prisoners' and Victims' Claims Act 2005

7.54 The Law Society notes that the Prisoners' and Victims' Claims Act 2005 allows some victims of offending to seek damages from an offender who made a successful claim against the Crown for certain kinds of acts, including damages for breaches of the Bill of Rights.

7.55 The Bill leaves unanswered the question of how the redress scheme would work in relation to the Prisoners' and Victims' Claims Act 2005. It is unclear whether the Act would allow claims by a victim of an offender who is to receive compensation under the redress scheme.

7.56 The Law Society recommends that the Bill make express provision on this issue to ensure it does not get left to complex litigation to decide after the fact.

7.57 We further note that by logical corollary, where offenders are denied the possibility of financial redress for abuse they suffered in care, victims of that offender would also be deprived of the opportunity to claim a share of the compensation through the Prisoners' and Victims' Claims Act scheme. Such an outcome may undermine public confidence in the proposed redress scheme.

Availability of Legal Aid

7.58 While most people making applications for redress will have Legal Aid assistance,[41] the Law Society recommends that the Bill should make explicit provision to enable civil legal aid applications for the purposes of applications that are referred through to the proposed sections 19 and 21 determinations. Applications referred to the redress officer under proposed sections 19 and 21 will require a more considered and fulsome application to ensure all relevant concerns are addressed, and we suggest that this would best be done with the assistance of a lawyer. It aligns with the purpose of the legal aid scheme and would address the issue of the likely financial inaccessibility of private lawyer services faced by these applicants (noting that the applicant would still need to meet the usual eligibility criteria for a grant of legal aid).

8 Conclusion

8.1 Notwithstanding the above drafting recommendations, the Law Society reiterates its recommendation that the Bill does not proceed in its current form. Substantive additional policy work is required.

David Campbell
Vice-President

41 Section 10, Legal Services Act 2011.