



9(2)(a)

On 24 October 2017, you emailed the Ministry requesting, under the Official Information Act 1982, the following information:

- *The Chief Executive's Advisory Panel (CEAP) sought legal advice around their jurisdiction when it comes to hearing complaints about affidavits put by Child, Youth and Family (CYF) before the family court.*
  - *I would like to know when they sought this advice?*
  - *Who did they seek this advice from?*
  - *Can I see what they asked and the advice given to them about this.*
  - *Has the CEAP terms of reference been admitted to fix this issues or how have the MSD and CEAP acted upon this legal advice that is different from before they had it in practice.*

On 30 October 2017, the Ministry sought clarification about your request and you provided the following information:

9(2)(a)

Your request is addressed in two parts below:

- *I would like to know when they sought this advice*
- *Who did they seek this advice from?*
- *Can I see what they asked and the advice given to them about this?*

This information is withheld under section 9(2)(h) of the Act in order to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice. Some of this information is also withheld under section 9(2)(a) of the Act in order to protect the

privacy of natural persons as specific cases are outlined. The need to protect the privacy of these individuals outweighs any public interest in this information.

- *Has the CEAP terms of reference been admitted to fix this issues or how have the MSD and CEAP acted upon this legal advice that is different from before they had it in practice.*

With the formation of the Ministry for Vulnerable Children, Oranga Tamariki, Complaints Management took the opportunity to clarify the Panel's jurisdiction. Please find enclosed copies of excerpts of the '*Terms of Reference for the Chief Executive's Advisory Panel for Complaints - Ministry of Social Development*', and the '*Terms of Reference Chief Executive's Advisory Panel - Ministry of Vulnerable Children, Oranga Tamariki*'. Differences between the two documents relevant to your request have been highlighted for your reference. You will note that the Panel's scope is clarified rather than changed.

You will also note that the Panel is able to review complaints relating to the quality of the Ministry's contribution to the Court process, provided the complaints do not relate to matters currently before the Court.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Yours sincerely



Merv Dacre  
**Deputy Chief Executive, Corporate Solutions**

Terms of Reference – Chief Executive’s Advisory Panel for Complaints- Ministry of Social Development	Terms of Reference – Chief Executive’s Advisory Panel – Ministry of Vulnerable Children, Oranga Tamariki
<p><b>In Scope</b></p> <p>The scope of complaints the panel can consider is the same as the scope of the internal complaints resolution system. It will include:</p> <ul style="list-style-type: none"> <li>• the service provided by staff when carrying out their functions (including breaches of the service charter)</li> <li>• ongoing case-management and social work decision-making where discretion is exercised under delegated authority of the Chief Executive, and</li> <li>• decisions made by social work staff when exercising their statutory powers and functions.</li> </ul> <p>Complaints about 3rd party providers will be assessed by the panel from the perspective of Child, Youth and Family’s statutory role and functions (ie. in relation to assessment, approval, selection, and monitoring, etc of the provider). Complaints from those receiving services from 3rd party provider organisations would be addressed, in the first instance, by the providers, who are required to have their own complaints processes in place.</p> <p>In addition to decisions made under the Children, Young Persons and Their Families Act 1989; decisions made by social workers under the Adoption Act 1955 and the Adoption (Intercountry) Act 1997 prior to an application to adopt being submitted to the Court would also fall within the scope of the panel. Decisions under the Adult Adoption Information Act 1985 will also fall within scope.</p> <p>Most decisions made under the Care of Children Act 2004 will be out of the scope of the panel where the Court is the ultimate decision maker and because any dispute that arises is a matter that can be referred to the Court for resolution. Complaints about the</p>	<p><b>In Scope</b></p> <p>The Panel is a transitional measure to allow for the continuation of the Child, Youth and Family complaints process until such time as a new formal Feedback and Complaints process for the Ministry for Vulnerable Children, Oranga Tamariki, is phased in. As such the Panel can consider only those complaints about Oranga Tamariki that fell within the scope of the previous Child, Youth and Family complaints process.</p> <p>The scope of complaints the Panel can consider includes:</p> <ul style="list-style-type: none"> <li>• the service provided by staff when carrying out their functions (including breaches of the service charter)</li> <li>• ongoing case-management and social work decision-making where discretion is exercised under delegated authority of the Chief Executive, and</li> <li>• decisions made by social work staff when exercising their statutory powers and functions.</li> </ul> <p>Complaints about third party providers will be assessed by the Panel from the perspective of the Ministry’s statutory role and functions (ie. in relation to assessment, approval, selection, and monitoring, etc of the provider). Complaints from those receiving services from third party provider organisations will be addressed by the providers, who are required to have their own complaints processes in place.</p> <p>In addition to decisions made under the Children, Young Persons, and Their Families Act 1989; decisions made by social workers under the Adoption Act 1955 and the Adoption (Intercountry) Act 1997 prior to an application to adopt being submitted to the Court would also fall within the scope of the Panel. Decisions under the Adult Adoption Information Act 1985 will also fall within scope.</p> <p>Complaints that involve Court decisions, or the judicial process, under the Care of Children Act 2004 fall outside the scope of the Panel. The Court is the ultimate decision maker and any dispute that arises can be referred to the Court for resolution. However,</p>

behaviour of staff when exercising these functions would remain in scope.

### Out of Scope

The panel will not consider:

- complaints about a case currently before the Court (since it has the potential to delay court hearings or exacerbate animosity of the parties to the proceedings)
- complaints about Court decisions or judicial process or matters capable of review on the merits of the case by a Court or Tribunal unless there are special circumstances that make it unreasonable to use those review rights
- complaints made by current residents of a Child, Youth and Family residences about matters capable of review through the residences grievance procedure
- complaints made by staff (these should be discussed with a manager and potentially referred to Human Resources)
- complaints about the standard of care for those in care before 1992 (these are managed by the Historical Claims Team)
- complaints from provider organisations about their approval status and contracts, and
- aspects of complaints which have resulted in the matter being treated as an employment matter.

#### *Disciplinary matters*

If a complaint raises an issue about a staff member's actions that needs to be investigated as a

the quality of the Ministry's contribution to the Court process is within the scope of the Panel.

### Out of Scope

The Panel will not consider:

- complaints that involve matters currently before the Court (since it has the potential to delay Court hearings or exacerbate animosity of the parties to the proceedings)
- complaints about Court decisions or the judicial process or matters capable of review on the merits of the case by a Court or Tribunal unless there are special circumstances that make it unreasonable to use those review rights. However, the quality of the Ministry's contribution to the Court process is within the scope of the Panel.
- Complaints about matters that are either before the Coroner, or have been determined by the Coroner.
- complaints about matters that are currently being, or have been, reviewed by the Privacy Commissioner, the Ombudsman, and the Social Workers Registration Board.
- complaints made by current residents of Ministry residences about matters capable of review through the residences grievance procedure (Whaia Te Maramatanga)
- complaints made by staff (these should be discussed with a manager and potentially referred to Human Resources)
- complaints about the standard of care for those in care before 2008 (these are managed by the Historic Claims Team)
- complaints from provider organisations about their approval status and contracts, and
- aspects of complaints which have resulted in the matter being treated as a disciplinary matter in relation to employees of the Ministry.

#### *Disciplinary matters*

If a complaint raises an issue about a staff member's actions that needs to be investigated as a

disciplinary matter, an enquiry into those actions will be out of the scope of the complaints process and therefore the panel. Disciplinary concerns will be managed as a disciplinary investigation between the employee and the Ministry.

However, although a complaint may raise a disciplinary issue, there may be practical consequences for the complainant which can still be addressed by the complaints process without enquiring into the reasonableness of the behaviour that led to those consequences.

If there are other aspects of the complaint unrelated to the disciplinary matters, these can still be treated as a complaint under the Child, Youth and Family Complaints Resolution Process.

#### *Social Workers Registration Board*

Where Child, Youth and Family is notified by the Social Workers Registration Board that they are (or will be) investigating a complaint received, Child, Youth and Family will liaise with the Board and agree on a course of action in line with the agreed protocol.

### **Relationship with other bodies**

The Courts, the Children's Commissioner, the Office of the Ombudsmen and the Social Worker Registration Board all have a role in reviewing decisions and/or inquiring into and resolving complaints about Child, Youth and Family actions. The CE's review panel would complement rather than replace these other avenues. It is intended that MSD will correspond with these bodies in relation to the overall complaints resolution system.

The Children's Commissioner investigates actions (including decisions) made under the Children, Young Persons and Their Families Act 1989. The Ombudsman can investigate any Child, Youth and Family decision, except where there is an effective avenue of review or appeal to a Court or Tribunal that has not been exercised. Under the Social Worker Registration Act 2003, a Social Workers Complaints and Disciplinary Tribunal considers complaints against registered social workers which relate to breaches of the code of professional practice.

There will be a clear framework for working with the Office of the Ombudsmen, including detail around the type and timing of involvement by the Ombudsman and a contact point at MSD who can

disciplinary matter, an enquiry into those actions will be out of the scope of the complaints process and therefore the Panel. Disciplinary concerns will be managed as a disciplinary investigation between the employee and the Ministry.

However, although a complaint may raise a disciplinary issue, there may be practical consequences for the complainant which can still be addressed by the complaints process without enquiring into the reasonableness of the behaviour that led to those consequences.

If there are other aspects of the complaint unrelated to the disciplinary matters, these can still be treated as a complaint under the Ministry's complaints resolution process.

#### *Social Workers Registration Board*

Where the Ministry is notified by the Social Workers Registration Board that they are (or will be) investigating a complaint received, the Ministry will liaise with the Board and agree on a course of action in line with the agreed protocol.

### **Relationship with other bodies**

The scope of the complaints the Panel may consider is governed by the principle that the Panel's considerations should not interfere with or undermine a judicial or statutory process. The Courts, the Children's Commissioner, the Office of the Ombudsman, the Privacy Commissioner and the Social Worker Registration Board all have a role in reviewing decisions and/or inquiring into and resolving complaints about the Ministry's actions. The Panel complements rather than replaces these other avenues. The Panel does not have jurisdiction to consider a complaint about matters that have been considered by the above bodies.

The Children's Commissioner investigates actions (including decisions) made under the Children, Young Persons, and Their Families Act 1989.

The Ombudsman can investigate any Ministry decision, except where there is an effective avenue of review or appeal to a Court or Tribunal that has not been exercised.

The Privacy Commissioner can investigate any complaint alleging that an action is, or appears to be, and interference with the privacy of any individual.

receive complaint referrals. A Working Protocol around Child, Youth and Family complaints will be drafted and discussed with the Ombudsman in the near future.

MSD already has a Memorandum of Understanding with the Children's Commissioner. Protocols around dealing with complaints under the new complaints resolution system will be negotiated with the Commissioner and appended to the Memorandum.

The Social Worker Registration Board's complaints and disciplinary process has oversight of the professional practice of registered social workers, including those employed by Child, Youth and Family. A protocol around this interface is being developed.

The Social Worker Registration Board's complaints and disciplinary process has oversight of the professional practice of registered social workers, including those employed by the Ministry. Under the Social Worker Registration Act 2003, a Social Workers Complaints and Disciplinary Tribunal considers complaints against registered social workers which relate to breaches of the code of professional practice.