

# **TERMS OF REFERENCE**

## **Chief Executive's Advisory Panel For Complaints**

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

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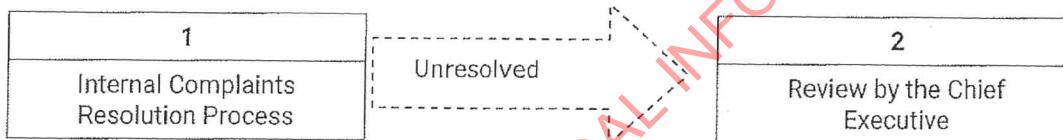
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## Summary

- 1 On 1 April 2017 the Ministry for Vulnerable Children, Oranga Tamariki (“the Ministry”), took over the functions of Child, Youth and Family from the Ministry of Social Development. The Chief Executive’s Advisory Panel for Child, Youth and Family complaints continues as a transitional measure until such time as a new formal Feedback and Complaint process for the Ministry is developed and phased in. The Panel is responsible to the Chief Executive of the Ministry for Vulnerable Children, Oranga Tamariki (“the Chief Executive”).
- 2 The Panel is an advisory committee to the Chief Executive. It assists the Chief Executive in her review of complaints about the Ministry’s behaviour and decision-making in its social work functions and activities, when those complaints have not been resolved within the Ministry’s internal complaints resolution system.
- 3 All Panel Members will be appointed from outside the Ministry. It will therefore take an independent view.
- 4 Any complaint about Child, Youth and Family lodged with the Review Secretariat prior to 1 April 2017, and where an outcome has not been determined, will to be reviewed by the Chief Executive of the Ministry for Vulnerable Children, Oranga Tamariki.

### The Complaints Resolution System

- 5 The Ministry’s complaints resolution system has two main components:



- 6 The internal complaints resolution process will ensure that complaints which reach the Chief Executive and the Panel for consideration have already been thoroughly reviewed by the Ministry through the internal complaints resolution process.
- 7 The purpose of the Panel is to provide assistance to the Chief Executive in her decision making in relation to complaints. It provides a further option for complainants who remain dissatisfied with the outcome of the Ministry’s internal complaints resolution process and desire a review which is independent from the Ministry.
- 8 The Panel will provide a review that:
  - meets the need for complaints to be considered in a forum outside the Ministry that takes an independent view – “a fresh pair of eyes”
  - is undertaken by a senior group with expertise
  - identifies opportunities for improvement in organisational performance, processes and systems.
- 9 The Panel will continue as a transitional measure until such time as a new formal Feedback and Complaint process for the Ministry has been developed and phased in.

## The Panel

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### Principles

10 The Panel will review complaints consistent with the following principles:

#### *Principles of natural justice:*

11 The principles of natural justice require absence of bias, and the opportunity to be heard. These principles apply to every stage of the complaints process, not just to the Panel.

#### *Independence of reviewers from earlier decisions made on the complaint*

12 Those reviewing the complaint will not have been involved in previous levels of decision-making.

#### *Other appeal/review rights*

13 Complainants retain the right to take their complaint to other relevant bodies with jurisdiction, such as the Office of the Ombudsman, the Privacy Commissioner, the Children's Commissioner, or the Social Workers Registration Board, at any time during the process.

#### *Privacy*

14 The principles of the Privacy Act 1993 will apply to information shared at a Panel meeting and reports produced by the Panel.

#### *Restorative focus*

15 The Panel will have a restorative focus, making an effort to 'put things right' and restore the working relationship between the complainant and the Ministry.

### Membership

16 The Panel is established by the Chief Executive within her existing powers to establish a review panel. The Chief Executive will appoint to her Panel a Chair, Alternate Chairs, and Members. All Panel Members will be appointed from outside the Ministry, and paid on a fee for service basis according to the Cabinet Office *Fees Framework for Members of Statutory and Other Bodies Appointed by the Crown*.

17 A Chair should be a person of standing in the community, who understands the principles of natural justice, who is expert in or who has knowledge of statutory social work and associated social services, and who is independent of the Ministry, thus providing an external contribution. Panel Members will also be drawn from outside the Ministry and could comprise combinations of the following:

- a person of standing in the social work or child and family support sector and/or
- a person able to represent the interests of families and parents (eg. from a parenting organisation) and/or with expertise in children's services and child development, and the family support system, and/or
- a person with knowledge of and the ability to apply, the Children, Young Persons and Their Families Act 1989, the Care of Children Act 2004, the social work functions of the Adoption Act 1955, the Adoption (Intercountry) Act 1997, and/or the Adult Adoption Information Act 1985, the Privacy Act 1992 and the Official Information Act 1981.

18 Members should be familiar with Maori and Pacific cultures in particular, and migrant cultures, given the ethnic composition of the Ministry's client base, and with children's issues, services and child development.



## Functions

- 19 The Panel will have an advisory function rather than a decision-making function. It will not have the power to direct the Chief Executive or to overturn decisions made within the Ministry. The function of the Panel will be to:
- review the complaint from an organisational perspective and how the Ministry responded to it through its internal complaints resolution process
  - obtain further information and advice that might help resolve the complaint to all parties satisfaction
  - focus on achieving resolution for the complainant by addressing clearly defined issues and desired outcomes
  - reach findings on each complaint being reviewed (upheld, not upheld, upheld in part)
  - make recommendation(s) to the Chief Executive regarding whether they uphold in total or in part or not uphold a complaint
  - where a complaint is upheld in total or in part, make recommendations that:
    - provide practical remedies and
    - support local solutions where the opportunity for resolution between the complainant and the Ministry exists
  - identify any consequent injustice to the complainant and recommend redress.
- 20 The Panel will not reinvestigate any complaints that it has already considered. Nor will it consider any substantially new complaints that have not been first fully considered by the Ministry's internal complaints resolution process.
- 21 The Panel will produce a report for the Chief Executive setting out the:
- the Panel's findings in relation to the service provided by the Ministry and its decision making
  - information it has relied upon in its deliberations and
  - reasons for the Panel's recommendations.
- 22 The Panel will also contribute to regular reports to the Chief Executive on the overall complaints system. These reports will include information on the Panel's findings and any wider or systemic issues the Panel has identified in its work. This reporting will inform opportunities for improvements in organisational performance, processes and practice. The level of involvement by both the Panel and its Secretariat in this reporting will be determined by the General Manager, Ministerial and Executive Services, Corporate Solutions.

## Scope

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- 23 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, statutory or employment process.
- 24 In order for complaints to proceed to the Panel for review they must:
- be within the scope of the Panel's jurisdiction, and
  - remain unresolved after being thoroughly reviewed by the Ministry's internal complaints resolution process.

## In Scope

- 25 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.
- 26 The scope of complaints the Panel can consider includes:
- the service provided by staff when carrying out their functions (including breaches of the service charter)
  - ongoing case-management and social work decision-making where discretion is exercised under delegated authority of the Chief Executive, and
  - decisions made by social work staff when exercising their statutory powers and functions.
- 27 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.
- 28 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.
- 29 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, the quality of the Ministry's contribution to the Court process is within the scope of the Panel.

### *An Organisational focus – The lens through which the Panel will view complaints*

- 30 The Panel will review complaints about service and decision making from an organisational focus.
- 31 Prior to an application being made to the Panel, the Ministry, through their internal complaints resolution process, will have formed an organisational view with regard to the complaint. The Ministry will report to the Panel outlining the factual background, the investigation, the Ministry's findings and their response, and will appear before the Panel to present this.
- 32 Therefore the Panel will focus on organisational performance, processes and systems and organisational accountability - the Panel will not focus on individual social worker's actions or the actions of staff as individuals.
- 33 The Panel will consider the complaint (the action, inactions, etc) in the context of the organisational environment and any relevant Ministry policies and procedures, and the Ministry's response to the complaint, rather than on assigning responsibility to individuals involved in the events in question.

## Out of Scope

- 34 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*

- 35 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.
- 36 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.
- 37 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*

- 38 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.

### **Recommendations and Remedies**

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- 39 The Panel can recommend whether a complaint should be upheld, upheld in part or not upheld.
- 40 In making their recommendation, the Panel will need to assess:
- whether proper processes and proper regard to all relevant policies and procedures of the Ministry were followed
  - whether relevant statutory provisions were considered
  - what factors were taken into account and whether they were the right factors to take into account
  - if proper professional skills and knowledge were brought to the decision

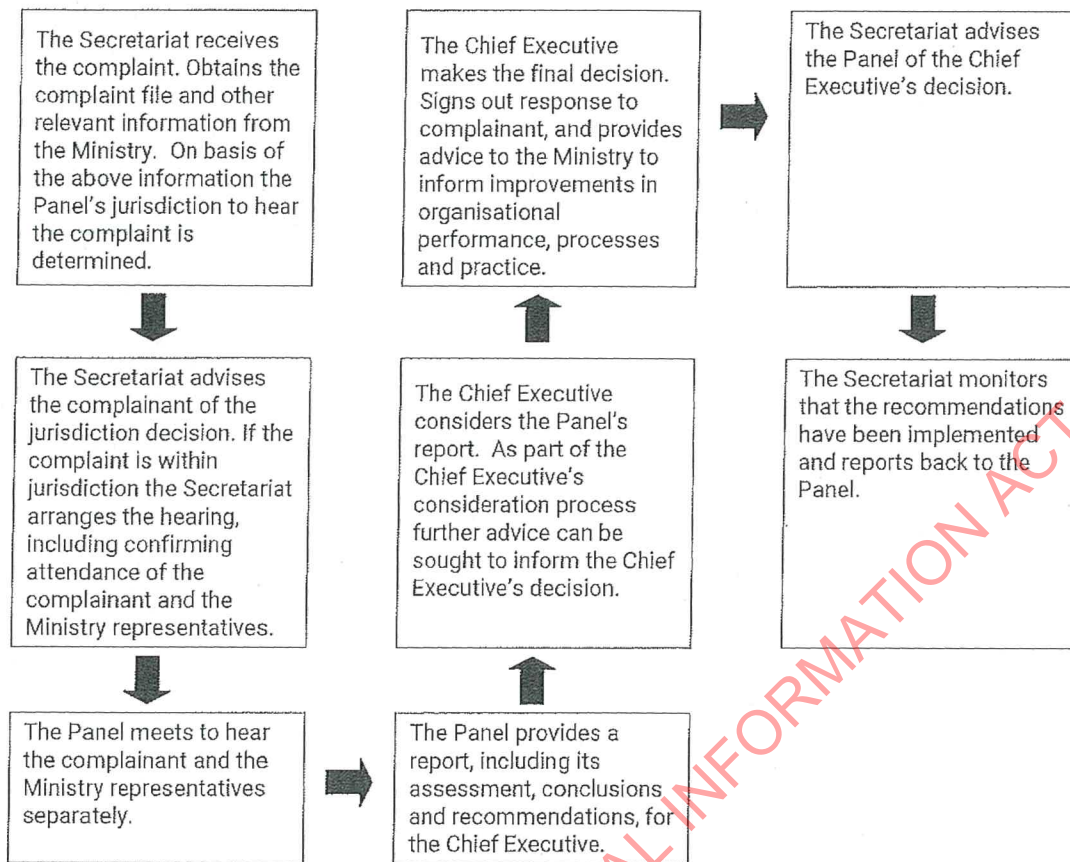
- the organisational and other context of the action or decision
  - whether there was any bias in the decision making, and
  - whether the decision was reasonable. A decision is unreasonable only if it is so beyond the pale that no social worker could have made it on the basis of the facts known at the time.
- 41 If the Panel recommends that a complaint be upheld in whole or in part, the Panel may recommend an appropriate remedy to the Chief Executive. The recommendation for remedy will have a restorative focus, making an effort to “put things right” and to restoring working relationships between the complainant and the Ministry.
- 42 The remedies available are those currently available to the Chief Executive, taking into account the limitations of the Children, Young Persons, and Their Families Act 1989. These limitations mean that certain decisions made by social workers, when exercising powers conferred directly on them by statute, cannot be overturned unless the social worker is satisfied there was an error or omission in the previous exercise of their power.
- 43 Other remedies that the Chief Executive may consider when upholding a complaint include:
- an apology
  - admission/acknowledgment of fault
  - an explanation of how or why the issue occurred and what steps are being taken to avoid it recurring
  - honour of a prior commitment
  - providing information that assists
  - change of decision (if available)
  - an ex gratia payment, or actual compensation if the complainant could take legal action in respect of the complaint
  - change of policy, procedure or practice
  - correction of misleading or incorrect records
  - promise not to repeat the action or error, and/or
  - a reassessment of the complainant’s needs.
- 44 The Panel will not be able to recommend that disciplinary action be taken in respect of any staff member, or recommend that a Court decision be overturned. Nor will there be any performance assessment outcomes as a result of a Panel review.

## Panel Process

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- 45 The diagram on the following page provides general guidance on the process that is followed in processing requests for a Chief Executive’s review of a complaint:





### Relationship with other bodies

- 46 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.
- 47 The Children's Commissioner investigates actions (including decisions) made under the Children, Young Persons, and Their Families Act 1989.
- 48 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.
- 49 The Privacy Commissioner can investigate any complaint alleging that an action is, or appears to be, an interference with the privacy of any individual.
- 50 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.

## Panel meetings

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- 51 To reach an informed decision it is important that the Panel understands the various issues relating to the complaint from both the complainant's and the Ministry's perspective. It is expected that for most complaints the Panel will meet with the complaint/s and with Ministry representatives.
- 52 Complainants will be given the choice of whether or not to attend the Panel hearing, but will be encouraged to attend to talk about their complaint, and what will resolve matters for them.
- 53 The Ministry will be asked by the Review Secretariat to advise whom, from the Ministry, they consider should meet with the Panel to inform the Panel's deliberations. Attendance is at the Panel's discretion. The Panel Chair can request that others from the Ministry attend the panel.

### Quorum

- 54 The Chair appointed for the hearing may determine the number of Panel Members required to consider the complaint.

## Support for complainants

- 55 Some form of support for complainants whose complaints are reviewed by the Panel will be a feature of the complaints process. Some complainants, as a result of age and stage of development, cultural or language differences or a disability, may require support to present their case to a Panel. The Ministry will arrange for an interpreter if required. A support person (such as a family member or friend) can also attend a panel meeting.
- 56 The Ministry will pay the actual and reasonable costs for travel, accommodation and meals to enable the complainant to attend a Panel meeting. The approach will be consistent with the guidance for Social Security Appeal Authority hearings.
- 57 Funding of the travel costs for a support person will be considered on a case-by-case basis (such as in the case of a child or young person making a complaint who requires an adult to accompany them<sup>1</sup>).

## Review Secretariat

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- 58 The Panel is supported by the Review Secretariat, which is located within Ministerial and Executive Services, Corporate Solutions, Ministry of Social Development. The responsible manager is the General Manager, Ministerial and Executive Services.
- 59 The functions of the Secretariat will include:
  - providing administrative support and training for the Panel (including managing the flow of complaints, drafting responses to complainants on the basis of the Chief Executive's decisions, recording the outcome of complaints and maintaining a database to support the operation of the Panel)
  - liaising with complainants about Panel meetings and to request any additional information that may be required for the meeting
  - providing advice and assistance to the Panel on the complaints process and issues of jurisdiction

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<sup>1</sup> This is consistent with supporting people to attend decision-making forums, such as Family Group Conferences.

- providing advice to the Ministry on complaint policies and procedures and on specific cases
- contributing to the development, and overseeing the use of protocols between the Panel and other review bodies, and
- undertaking trend analysis and monitoring the performance of the Ministry's complaints procedure on an ongoing basis, to inform improvements in organisational performance, processes and practice.

### Ongoing monitoring and quality assurance

- 60 Regular reporting on Ministry and Panel decisions and any wider issues will inform improvements in organisational performance, processes and practice. The level of involvement by both the Panel and its Secretariat in this reporting will be determined by the General Manager, Ministerial and Executive Services.
- 61 Relevant information for internal reporting and the review of the Panel includes the following:
- volume: total number of complaints received and reviewed
  - Panel outcome: the number of complaints upheld/not upheld/upheld in part
  - timeliness: time taken to review and decide complaints (average rate and range), and
  - backlog: complaints on hand awaiting review.
- 62 The Secretariat should also collect the following monitoring information on an on-going basis:
- the types of complaints made, and frequency by type which have been escalated for review
  - which client groups made the complaints: child or young person/family member/member of public/professional working with Child, Youth and Family/contracted provider/caregiver
  - frequency of repeat complaints/complainants
  - use of/demand for support people and interpreters
  - qualitative data: themes and learning from complaints to contribute to organisational learning and improvement and changes to services that have consequently been implemented
  - extent to which cases are being escalated consistent with or outside the criteria (ie. measure the extent to which resolution at lowest level is being met), and
  - operating costs, broken down for Panel and for costs associated with complainants and other participants attending.
- 63 This information will be reported to the Chief Executive, and the Deputy Chief Executive Leadership and Organisational Development.