

7 November 2014

Michele McCreddie  
General Manager, Legal Aid Services  
Legal Services Commissioner  
Vogel Centre  
19 Aitken Street  
DX SX10125  
Wellington

Dear Michele

### **Vulnerable Children Act 2014 and Children's Action Plan**

Thank you for your letter of 14 October 2014, outlining the work the Ministry of Justice is undertaking to implement the Children's Action Plan (CAP) and seeking the Law Society's feedback. We have considered the two draft CAP documents provided, *The Vulnerable Children Act: Proposed elements of the standard safety check* and *Safer Organisations, Safer Children*, and our comments are set out below.

#### ***The Vulnerable Children Act: Proposed elements of the standard safety check***

##### *Police vetting (paragraphs 24 – 29)*

We note that Police vetting itself does not contain any natural justice checks. However, section 28(4) and (5) of the Vulnerable Children Act 2014 appears to be a sufficient safeguard, in addition to the employer's obligation under employment law generally to act in a procedurally fair way before taking any adverse action against an employee.

##### *Interviewing the candidate (paragraphs 35 – 37)*

The proposed process in relation to candidate interviews does contain a natural justice check, by ensuring that candidates are given an opportunity to respond to any concerns about their suitability. While that is an important and necessary safeguard, there may also be occasions when candidates need to be able to verify or check their own information or consult with their legal advisor – for example about dates, places, whether an offence qualifies as a spent conviction, or whether an offence is relevant – before responding definitively in the interview. Allowance should be made for such requests.

#### ***Safer Organisations, Safer Children: using child protection policies to build safer organisations***

##### *Section 9, Confidentiality and information sharing*

Section 9 of the draft *Safer Organisations, Safer Children* document discusses guidance on information-sharing and confidentiality in the context of safeguarding children's safety. Paragraph 5 gives examples of staff obligations under the Privacy Act 1993, as follows:

“Staff should also understand their obligations under the Privacy Act 1993. For example:

- a. When collecting personal information about individuals, it is important to acquire their informed consent, or the consent of the parents, guardians or carers of young children.

- b. In addition, staff should be aware that information can be disclosed without the written consent of the person who it is about where there is a “serious threat” to the safety of a child or children.”

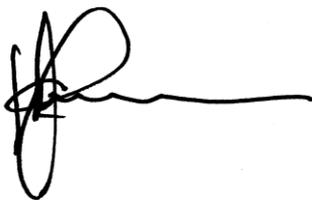
This summary does not adequately convey staff obligations under privacy legislation, and amended wording is suggested:

“Staff should also understand their obligations under the Privacy Act 1993 (and for health agency staff, the Health Information Privacy Code), namely:

- (a) When collecting personal information about individuals, it is important to be aware of the requirements of the privacy principles – i.e. the need to collect the information directly from the individual concerned and when doing so to be transparent about: the purposes for collecting the information and how it will be used; who can see the information; where it is held; what is compulsory/voluntary information; and that people have a right to request access to and correction of their information;
- (b) Staff may however disclose information under the Privacy Act/Health Information Privacy Code where there is a good reason to do so – such as where there is a serious risk to individual health and safety (see privacy principle 11/Code rule 11). As noted in paragraphs 1 – 4 above, disclosure about ill-treatment or neglect of a child/young person may also be made to Police or Child, Youth and Family under sections 15 and 16 of the Children, Young Persons, and Their Families Act 1989.”

We hope you find these brief comments helpful. If you wish to discuss the issues raised, please contact the Law Society’s Law Reform Manager Vicky Stanbridge ([vicky.stanbridge@lawsociety.org.nz](mailto:vicky.stanbridge@lawsociety.org.nz) / ph 04 463 2912) in the first instance.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Chris Moore', with a long horizontal line extending to the right.

Chris Moore  
**President**