

VISA PAK ISSUE 457 — 17 DECEMBER 2020

## **RESOLUTIONS AND THE CLEAN SLATE ACT**

The following, which arose from a complaint to the Office of the Ombudsman, explains the way the Resolutions Ministerials team is treating cases involving the Criminal Records (Clean Slate) Act 2004 (the Clean Slate Act).

The Resolutions Ministerials team manages requests to the Minister and Associate Minister of Immigration for intervention where clients are not eligible for a visa without intervention. The team prepares “casenotes” which provide a summary of requesters’ immigration background for the Ministers’ or their delegated decision makers’ information, to inform their decision making. This includes character information and will refer to a client’s convictions where these relate to INZ’s character instructions. This is information provided by the client, or any police record held in the Police Intelligence Check portal.

The Clean Slate Act provides a scheme where an “eligible individual” is not required to disclose their New Zealand criminal record. In short, and generally, this is when a person’s convictions have not resulted in a custodial sentence, the individual has completed a rehabilitation period (seven years from sentence without further conviction), and was not convicted of a specified offence.

Clients may make more than one Ministerial request and it is the team’s practice to tag and attach a copy of any previous casenote when preparing a new ministerial casenote.

The Chief Ombudsman recently investigated a complaint in relation to a ministerial request. In that case there had been a previous ministerial for the client and in the casenote for the previous request the client’s criminal conviction history had been referenced.

It was noted in the “Character” section of the casenote for the new ministerial request that the client’s recent Police Vetting Report was clear, indicating that his convictions were covered by the Clean Slate Act. It was noted that the client was not required to declare these convictions to INZ in any future visa applications. However, the Chief Ombudsman noted that the decision maker had made a handwritten annotation that there were ‘unresolved’ character concerns relevant to his decision not to intervene. Therefore, the Chief Ombudsman was of the view that the casenote was unreasonable as it did not represent a fair and reasonable summary of the client’s character in the spirit intended by the Clean Slate Act.

The Resolutions Ministerials team has developed detailed guidance for cases involving the Clean Slate Act. They will no longer attach and tag the previous casenote in cases where there was reference to convictions, when the convictions are now covered by the Clean Slate Act. Instead, a summary of any relevant information will be incorporated into the current casenote. Also, advice will be provided to the decision maker noting that any convictions held by the client are covered by the Clean Slate Act, the client is not required to declare these convictions to INZ, and this information is irrelevant to the decision maker’s decision.