

NSW POLICE FORCE PROPOSAL TO AMEND SECTION 306M OF THE *CRIMINAL PROCEDURE ACT 1986* (NSW)

**Response on behalf of
Legal Aid NSW
to the Department of Justice
April 2015**

Legal Aid NSW welcomes the opportunity to respond to the NSW Police Force (NSWPF) proposal to expand the definition of ‘investigating official’ in section 306M of the *Criminal Procedure Act 1986* (NSW) (the Act). Section 306S of the Act allows vulnerable witnesses to give evidence in chief in criminal proceedings in the form of a recorded interview made by an investigating official.

The Legal Aid NSW Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children’s Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Legal Aid NSW Family Law Division assists children and other family members in care and protection matters. Both services involve clients and/or witnesses who are also vulnerable persons.

Legal Aid NSW acknowledges that re-interviewing vulnerable witnesses can be traumatising and should be avoided where possible. Although the proposal would appear to have merit on its face, Legal Aid NSW is unable to support the proposal. Legal Aid NSW has a number of concerns in relation to the proposal, including:

- The level of expertise of interstate investigating officials. We believe that there should be a minimum level of specialist training for people who interview vulnerable persons. For example the NSW Joint Investigation Response Team (JIRT) investigating officials undergo specialist training.
- Inferior interviewing techniques and associated investigative processes. For example, the interviews may contain bias and leading questions. NSW agencies may have difficulty addressing quality control issues associated with the conduct of interstate investigating officials and agencies.
- The impact on NSW court proceedings, including delays. For example, there may be practical difficulties associated with securing the attendance of interstate witnesses, such as the Officer-in-Charge, and compliance with subpoenas.

In summary, Legal Aid NSW is concerned that the quality of interviews undertaken could be affected by the NSWPF proposal and that there could be associated delays to NSW court proceedings.

Should you require any further information in relation to this response, please contact Alex Curnick, Strategic Policy and Planning – Legal Aid NSW, 02 9219 5909 or alex.curnick@legalaid.nsw.gov.au.