

# Children's worker safety checking under the Vulnerable Children Act 2014

Advice for interpreting and applying the Vulnerable Children Act 2014 and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015



## Children's Action Plan

Identifying, Supporting and  
Protecting Vulnerable Children

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# I. Introduction

## The Children's Action Plan and the Vulnerable Children Act 2014

The Government's Children's Action Plan includes a commitment to implement legislation for the vetting and screening of the children's workforce – these “children's worker safety checks” became law in the Vulnerable Children Act 2014 (the VCA), and came into force for new workers in core children's workforce roles on 1 July 2015.<sup>1</sup>

The VCA requires safety checking of all paid employees and contractors, employed or engaged by government-funded organisations, who work with children. The requirements for safety checking also apply to people undertaking unpaid children's work as part of an educational or vocational training course.

Businesses, unfunded non-government organisations, and voluntary organisations are not covered by the requirements, but are encouraged to also adopt the new standards voluntarily.

The VCA also contains a restriction on the employment of people with convictions for certain offences in some children's worker roles, subject to a government-run exemptions process.

More information on the Children's Action Plan and the Vulnerable Children Act 2014 can be found at: [www.childrensactionplan.govt.nz](http://www.childrensactionplan.govt.nz).

## Children's worker safety checking

People who have abused children, or who could do so in the future, may seek to work with children. Consistent, robust safety checking helps assess whether people might pose a risk.

The children's worker safety check is a legislative requirement in the VCA. Organisations that do not carry out the required checking process place children at avoidable risk, and this may result in prosecution.

The VCA describes the required safety checks broadly – the details are in the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015.

The required checks are based on existing good practice, and are intended to be flexible. Organisations need to follow the right process, including completing a risk assessment based on the information gathered. The VCA does not prescribe what decisions organisations should make (except when applying the Workforce Restriction). It is an expectation that decision-making will be reasoned, based on evidence, and put the child at the centre.

## Purpose of this document

This document is an agreed, all-of-government position on interpreting and applying the VCA and the regulations.

It is not a substitute for legal advice, and organisations are encouraged to seek independent advice if an issue arises implementing the new requirements.

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<sup>1</sup> Core workers work alone with, or have primary responsibility for or authority over children. See page 9 for more information.

To assist navigation, this document has been broken down into the following sections:

- Section I Introduction: Includes an overview of the new requirements and a quick-review checklist.
- Section II The Vulnerable Children Act 2014: More detailed guidance on the scope and operation of the VCA, including definitions of key terms.
- Section III Safety Checking: Detailed explanations about how to do each part of the safety check.

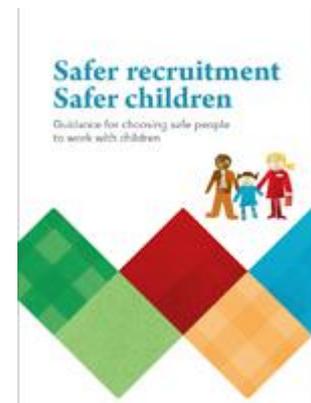
The following words are used to show what advice is mandatory under the VCA, and what is recommended good practice:

- **Must:** an absolute requirement of the VCA and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015.
- **Must not:** an absolute prohibition of the VCA and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015.
- **Should:** there may be valid reasons in particular circumstances to ignore this advice, but the full implications should be understood and the case carefully weighed.
- **Should not:** there may be valid reasons in particular circumstances when the particular advice to not do this may be ignored, but the full implications should be understood and the case carefully weighed.
- **May:** the advice may sometimes be appropriate, where the full implications are understood and the case carefully weighed.

## Other supporting documents

Organisations may use other resources to help them carry out safety checks, particularly guidance produced by the departments responsible for regulating or supporting each sector, or by specialist child protection agencies.

As example of a resource that may be helpful is *Safer Recruitment, Safer Children*. This is a set of good practice guidelines released in advance of the changes in the VCA. It gives organisations advice on selecting safe people to work with children, and elaborates on the content in this document. It was developed in partnership between the Ministry of Education and Child Matters, a Hamilton-based NGO with child protection expertise.



Another resource to consider is *Safer Organisations, Safer Children*, which helps organisations develop high quality child protection policies in response to new requirements in the VCA. It is a living document, and will evolve as our understanding of how to best respond to children at risk of harm changes.



Both resources are available at [www.childrensactionplan.govt.nz](http://www.childrensactionplan.govt.nz).

# Checklist: Children's worker safety checking

Below is an overview of the steps required to complete a children's worker safety check. For more information on each step, see [Section III Safety Checking](#). For explanation on the scope of the requirements see [Section II The Vulnerable Children Act 2014](#).

## Checks required for new children's workers

The following checks must have been completed for all people a specified organisation is seeking to employ or engage as a children's worker (including as a contractor) from 1 July 2015 for core children's workforce roles, and from 1 July 2016 for non-core children's workforce roles.

- 1 Identity confirmation, either by:
  1. Use of an **electronic identity credential** (e.g., the RealMe identity verification service), and a search of personnel records to check that the identity has not been claimed by someone else.
  2. Following the regulatory process to provide confidence that: Or
    - The identity exists (i.e. that it is not fictitious) by **checking an original primary identity document**.
    - The identity is a 'living' identity and the potential children's worker uses that identity in the community by **checking an original secondary identity document**.
    - The potential children's worker links to the identity either by checking an identity document that contains a **photo**, or by using an **identity referee**.
    - Searching **personnel records** to check that the identity has not been claimed by someone else.
- 2 An **interview** of the potential children's worker.   
The interview may be conducted via telephone or other communications technology.
- 3 Obtaining and considering a **work history**, covering the preceding five years, provided by the potential children's worker.
- 4 Obtaining and considering information from at least one **referee**, not related to the potential children's worker or part of their extended family.
- 5 **Seeking information** from any relevant professional organisation, licensing authority, or registration authority, including (but not limited to) confirmation that the potential children's worker is currently a member of the organisation, or currently licensed or registered by the authority.
- 6 Obtaining and considering information from a **New Zealand Police vet**, unless at least three-yearly New Zealand Police vetting is already a condition of the potential children's worker holding professional registration or a practicing certificate (and the specified organisation has confirmed that that registration or certificate is current).
- 7 Evaluation of the above information to **assess the risk** the potential children's worker would pose to the safety of children if employed or engaged, taking into account whether the role is a core children's worker or non-core children's worker role.

## Checks required for an existing children's worker

The following checks must have been completed by the date specified in the legislation for all people who are already employed or engaged by a specified organisation. For existing core children's workers this is by 1 July 2018 and for non-core children's workers, 1 July 2019.

- 1** Identity confirmation, either by:
1. Use of an **electronic identity credential** (e.g., the RealMe identity verification service), and a search of personnel records to check that the identity has not been claimed by someone else.
  2. Following the regulatory process to provide confidence that:  Or
    - The identity exists (i.e. that it is not fictitious) by **checking an original primary identity document**.
    - The identity is a 'living' identity and the potential children's worker uses that identity in the community by **checking an original secondary identity document**.
    - The potential children's worker links to the identity either by checking an identity document that contains a **photo**, or by using an **identity referee**.
    - Searching **personnel records** to check that the identity has not been claimed by someone else.
- 2** **Seeking information** from any relevant professional organisation, licensing authority, or registration authority, including (but not limited to) confirmation that the person is currently a member of the organisation, or currently licensed or registered by the authority.
- 3** Obtaining and considering information from a **New Zealand Police vet**, unless at least three-yearly New Zealand Police vetting is already a condition of the children's worker holding professional registration or a practicing certificate (and the specified organisation has confirmed that that registration or certificate is current).
- 4** Evaluation of the above information to **assess the risk** the children's worker would pose to the safety of children if employed or engaged, taking into account whether the role is a core children's worker or non-core children's worker role.

## Checks required for periodic rechecking

Every three years following their checks at the required standard, the following checks must be completed for each person an organisation continues to employ or engage as either a core or non-core children's worker.

- 1** Confirmation that the children's worker has not changed their name from the name on the documents produced during the initial identity confirmation (i.e., the presented primary or secondary document).  
If there has been a change to the person's name since he or she was last safety checked, the person must reconfirm his or her identity by producing a supporting name change document relating to his or her name change.
- 2** **Seeking information** from any relevant professional organisation, licensing authority, or registration authority, including (but not limited to) confirmation that the person is currently a member of the organisation, or currently licensed or registered by the authority.
- 3** Obtaining and considering information from a **New Zealand Police vet**, unless at least three-yearly New Zealand Police vetting is already a condition of the children's worker holding professional registration or a practicing certificate (and the specified organisation has confirmed that that registration or certificate is current).
- 4** Evaluation of the above information to **assess the risk** the children's worker would pose to the safety of children if employed or engaged, taking into account whether the role is a core children's workforce or non-core children's workforce role.

## II. The Vulnerable Children Act 2014

The VCA requires **specified organisations** to ensure new **safety checks** of **children's workers** they **employ or engage** are completed.

### Is an individual or organisation a specified organisation?

**Specified organisation** means:

- Any of the **State services** (as defined in section 2 of the State Sector Act 1988) – this includes Crown departments, corporations, agencies and a range of other organisations.
- An individual or organisation that is funded (whether wholly or partly, and whether directly or indirectly) by a State service to provide regulated service(s). The regulated services are identified in schedule 1 of the VCA, and include a range of health, welfare, justice and education services.

Local government is not subject to the requirements until a later date (up to 1 July 2017). More information will be made available once decisions about the timing have been made.

#### Examples of specified organisations

The children's workforce is large and diverse, and cataloguing every specified organisation is beyond the scope of this advice. However, the following are common examples:

- Schools (including State schools, State-integrated schools, private schools and partnership schools | Kura Hourua).
- Early childhood services (including kindergartens, home-based services, education and care centres, and parent-led centres employing staff).
- Organisations providing services to education providers (including trade academies, service academies, alternative education providers, attendance services, school bus services, and Education Outside the Classroom providers).
- Public hospitals, publically funded medical practices or facilities, medical practices belonging to primary health organisations (PHOs), and other publically funded providers of health services (e.g., ambulance services, maternity services, disability support services, Well Child Tamariki Ora services).
- Providers of services approved under the Children, Young Persons, and Their Families Act 1989 (including residencies, approved carers, iwi social services, cultural social services, child and family support services, and community services).
- Publically funded providers of social or support services (including victim support services, drug and alcohol rehabilitation services, childcare services, out-of-school care and recreational services, mentoring and counselling services, and youth services).

**Individualised funding exceptions** – despite otherwise meeting the relevant definitions, the following providers **are not** specified organisations:

- Parents, guardians or persons with care of a child, receiving funding (directly or indirectly) from a specified organisation so that they can secure regulated services for the child.
- An organisation which is paid by such persons to provide regulated services to the child, or an organisation that receives funding due to an entitlement of such persons.

### Examples of the individualised funding exceptions in practice

- A parent receiving an allowance from a government agency (e.g., ACC) to employ a private carer to look after an injured child: the parent is not a specified organisation and is not required to safety check the worker.
- An organisation receiving an allowance originating from a government agency (e.g., ACC) but which is paid directly by a parent, to employ one of the organisation's carers: the organisation is not a specified organisation and is not required to safety check the worker.
- An organisation receiving an allowance from a government agency (e.g., ACC) on behalf of a parent, to employ one of the organisation's carers: the organisation is not a specified organisation and is not required to safety check the worker.
- A parent receiving a funding allocation from the Ministry of Health for a disabled child. The parent is not a specified organisation and although they may use the state funding (in part or fully) to assist with care of the disabled child, they are not required to safety check any worker they employ or engage.

For the avoidance of doubt, if an organisation is contracted or funded by any of the State services to provide regulated services it will be a specified organisation, even if it *also* receives individualised funding – the exemption only applies where such arrangements are the sole source of public funds.

## Are any of the employees or contractors of the specified organisation “children’s workers?”

Specified organisations **must** ensure safety checks are completed (or updated as required) for any paid employees or contractors who will be working as a children’s worker.

A children’s worker works in, or provides a regulated service and their work involves regular or overnight contact with a child or children (other than children who are co-workers). The work must take place without a parent or guardian of the child, or of each child, being present.

Children’s workers can be members of the regulated workforce (i.e., those who require registration and annual practising certificates) or the unregulated workforce, and could be employed by the specified organisation, or someone working at the organisation via a contract for services.

In the VCA, work means paid work, although it does include unpaid work that is undertaken as part of an educational or vocational training course (e.g., a practicum at a school as part of an education qualification). The requirements do not apply to volunteers (see the box below).

Specified organisations employing or engaging trainees of this type will need to ensure safety checking to the required standard is done, either by the specified organisation itself, or by another individual or organisation on their behalf (for example, the training provider).

Organisations may wish to safety check workers who don’t meet these definitions to the required standard on an optional basis. This can be useful where people may be called upon to fill children’s worker roles at short notice.

### What about volunteers?

Organisations are still encouraged to safety check volunteers, but are not legally obligated to do so under the VCA (although some organisations may need to do so because of other requirements – for example, accreditation standards). Be aware that when you seek New Zealand Police vetting of volunteers they will be treated (for the purposes of determining what may be disclosed under the Criminal Records (Clean Slate) Act 2004) as if they were non-core children’s workers.

The VCA defines a child using the same definition as the Child, Young Persons, and their Families Act 1989, and will cover most children and young people aged 0-16. The one exception is children who are, or have been, in a civil union or marriage.

Regular or overnight contact means the person has contact (other than merely incidental contact) with a child or children overnight, at least once each week, or on at least 4 days each month. It does not matter whether the regular or overnight contact is with the same or different child or children each time.

#### **What contact is 'incidental'?**

When determining whether contact is incidental, organisations should consider whether the contact is minor, ancillary, or secondary to the work the person is employed or engaged for. If contact with children is an ordinary and expected part of the work, it is unlikely to be incidental.

Contact includes any of the following kinds: physical contact; oral communication (whether in person or by telephone); and communication through an electronic medium (such as email).

#### **Examples of children's workers**

The following are examples of workers who will generally meet the definition of a children's worker:

- Teachers (including registered and unregistered teachers in school and early childhood settings), teacher aides, support staff working in schools with regular contact with children, school bus drivers, school-based nurses or health professionals/workers.
- Health practitioners, and support staff working in health practices, who may have regular contact with children.
- Social workers, youth workers, paid carers, and other providers of social and support services who may have regular contact with children.
- Operators of telephone support services, and internet chat services that may involve regular communication with children.
- Operational New Zealand Police staff (both constabulary and employees), Corrections staff who may have regular contact with children.

## Core and non-core children's workers

The VCA creates two categories of children's workers: core children's workers and non-core children's workers. The required children's worker safety check is the same for each group, but the requirements come into force earlier for core children's workers. Core workers are also subject to the Workforce Restriction (see page 13 for more information).

Core worker means a children's worker whose work in, or providing a regulated service requires or allows that, when the person is present with a child or children in the course of that work, the person is either:

- the only person present; or
- is the children's worker who has primary responsibility for, or authority over the child or children present.

**Non-core worker** means a children's worker who is not a core worker.

### Is this person a core children's worker?

As the Workforce Restriction applies to core children's workers, it is important to carefully identify whether each role in your organisation is core or non-core.

When applying the legislative definition, the following considerations may be helpful:

- If a role allows a person to be alone with a child or children, it is a core workforce role.
- Being the children's worker with "primary responsibility for, or authority over" the child or children present is a matter of ordinary meaning of those words. When considering "primary responsibility", think about whether a role makes a person *accountable* for the children, or creates a *duty* or *obligation* towards the children. When considering "authority over", think about whether the role gives *power, the right to provide guidance, set behavioural boundaries, to make decisions or to apply appropriate behaviour management techniques* over the children present.
- Remember, responsibility or authority must be "primary" if a person will never be left alone with children and there will always be another adult person present who is more responsible or authoritative, a person will not be a core worker.

## When the requirements come into force

The children's worker safety checking requirements come into force at different times for new core and non-core workers, while existing workers need to have their checks updated over three years.

The key dates are:

- 1 July 2015 – all new *core workers* **must** be safety checked before commencing employment or engagement as a children's worker from this date.
- 1 July 2016 – all new *non-core workers* **must** be safety checked before commencing employment or engagement as a children's worker from this date.
- 1 July 2018 – all existing *core workers* **must** have been safety checked by this date.
- 1 July 2019 – all existing *non-core workers* **must** have been safety checked by this date.

In addition, children's workers will need to have their checks updated every three years while a specified organisation continues to employ or engage them.

### When should I screen my existing workforce?

Children's worker safety checking does not need to have been completed for existing workers until 1 July 2018 (and 1 July 2019 for non-core workers). We recommend that checking be staggered over the allowed three years. This will help the New Zealand Police manage demand for the Vetting Service, and avoid your organisation having to do periodic reassessments for large numbers of workers at the same time.

If you try to vet your entire workforce sooner than is required, the New Zealand Police may need to place your vetting requests in a queue while they process the requests for mandatory vetting.

# III. Safety Checking

## General requirements

Detailed requirements are contained in the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015. For children's workers who are going to start in a new role, the following checks are to be completed:

- Confirmation of the identity of the children's worker, either by using an appropriate manual process (including physically sighting the required documents), or by using an electronic service, such as the RealMe identity verification service.
- Collection and consideration of a range of information about the children's worker, including a work history, a referee check, and an interview of the children's worker. In addition, third party checks with their professional registration body or licensing authority (as appropriate) and a New Zealand Police vet are required.
- Evaluation of this information and assessment of the risk the person would pose to the safety of children if employed or engaged as a children's worker, including consideration of whether the role is a core children's workforce or non-core children's workforce role.

For children's workers who are already employed or engaged by the organisation, fewer checks are required: confirmation of identity, checks with the relevant professional registration body or licensing authority, a fresh New Zealand Police vet, and a risk assessment based on these checks.

When updating a check every three years the following checks are required: confirmation of any changes of officially recorded name, updating the checks with the relevant professional registration body or licensing authority, a fresh New Zealand Police vet, and a risk assessment based on these checks.

All aspects of the check must be completed before a person commences work as a children's worker (i.e., before they start in a role that allows for regular or overnight contact with children), or continues work as a children's worker after the relevant date for existing children's workers.

The elements of the safety check can be conducted in any order, and can be done in stages. For example, you may seek a work history from all applicants, interview short-listed applicants, and only seek referees or New Zealand Police vets for applicants who receive a conditional offer.

Specified organisations **may** rely on checks that **meet the standard** (i.e., have met or exceeded all of the regulatory requirements) that they conducted up to three years previously (i.e., for previous employees or contractors starting in a new role/contract) and on checks done by individuals or organisations on behalf of the specified organisation. However:

- It is good practice to recheck previous employees or contractors if there has been a significant period of absence, even if it is not required.
- If the person is going to be employed or engaged as a core worker, their New Zealand Police vet needs to have been done to this standard to make sure the right level of information was released. If not, another New Zealand Police vet will be needed.
- Where relying on a check done on their behalf by someone else, specified organisations should have a process in place to confirm that the person they are employing or engaging is the person who the third party has checked. This should include an identity verification process (including photographic documentation, or an identity referee, as appropriate).

- Responsibility for safety checking always rests with the employing or contracting organisation, and they should exercise due diligence when relying on checks undertaken by others.
- The requirement to recheck workers every three years runs from the date the last check was completed. If an organisation relies on a check done by someone else it is responsible for ensuring the check is updated as required every three years.

Agencies are considering the need for additional specific advice and guidance for specified organisations that may employ or engage children's workers who move between roles regularly, or are employed by multiple organisations. Please check [www.childrensactionplan.govt.nz](http://www.childrensactionplan.govt.nz) for updates.

## Assessing information and making a decision

When conducting a children's worker safety check you must consider all relevant information gathered during the safety checking process, to inform your final decision. As with other aspects of the check, a risk assessment must be carried out by the specified organisation, or by a person or organisation acting on its behalf.

During the process of safety checking, these principles should be followed:

- Safety checking is about using professional judgement to identify patterns of concerning attitudes or behaviours. These patterns can be subtle, and people conducting safety checks should be considering information holistically, rather than only looking for narrow indicators like the presence (or absence) of relevant criminal convictions.
- Indicators should always be considered in context. A criminal conviction, gaps in employment history, or a negative reference can have different significance depending on the context. People should be given the opportunity to respond to concerns about their suitability.
- Following-up on potential indicators is important. For example, if people talk about rehabilitation, the interviewer should ask for evidence. Possible evidence in this case may include programmes entered into, periods without re-offending and the name of a qualified person who can testify to the children's worker's suitability to work with children.

In addition, safety checking must always be done in accordance with existing legal protections. Specified organisations must be aware of their obligations under the Privacy Act 1993, the Human Rights Act 1993, the Employment Relations Act 2000 and (if relevant) the State Sector Act 1988.

The VCA does not (except where the Workforce Restriction applies) require that specified organisations take any action in response to information you gather, or make any particular decision. The final decision about whether a person is safe to work with children remains the sole responsibility of the specified organisation, who should act at all times in the best interests of children accessing the service.

This final decision may be based on a range of factors. Ultimately the decision maker should be satisfied that the children's worker would pose no undue risk to the safety of children if employed in engaged. Decision makers should consider whether they need to seek outside expert advice, further referees (or seek more information from previously contacted referees) and to raise any issues with the children's worker, including where information is unclear or inconsistent.

## Responsibility for safety checking contractors and the self-employed

The VCA applies to some, but not all, self-employed persons or sole practitioners:

- If a self-employed person or sole practitioner is contracted by a State service, then they will need to be safety checked by that State service if they fall within the definition of a children's worker.

- Similarly, if a self-employed person or sole practitioner is contracted by an organisation (or individual) that receives funding from a State service to provide regulated activities, the funded organisation or individual will be required to ensure that a safety check of the practitioner is done.

This latter requirement may also capture a small number of self-employed or sole practitioners who have formed separate legal entities, and are employed or engaged by them (for example, companies where a practitioner is both employed by the company and is its sole shareholder).

This can create a situation where there is a conflict of interest or no clear person positioned to do the required safety checking. This is a known issue, and agencies have been considering sector-specific solutions as part of their implementation planning. A separate screening service may be made available for the use of the self-employed and sole practitioners in such cases. Announcements about such a service, if one is developed, will be available at [www.childrensactionplan.govt.nz](http://www.childrensactionplan.govt.nz).

In the interim, enforcement of the requirements will recognise these practical limitations.

Other than in these situations, the VCA does not require safety checking of self-employed or sole practitioners. This means that private practitioners not in receipt of state funding are excluded.

## The Workforce Restriction

From 1 July 2015, the VCA introduces a restriction on people with certain criminal convictions from working as core children's workers. The restrictions apply to people with convictions involving children and/or violent behaviour, including child abuse and sexual offending. The specified offences subject to the Workforce Restriction are listed in Schedule 2 of the VCA.

People with convictions for specified offences will need to seek an exemption from the Workforce Restriction if they wish to work as core children's workers. In addition to voluntary disclosures by the children's worker, the New Zealand Police vetting result will clearly label the criminal conviction history any VCA specified offences, making it easy for employers to identify where a worker has any such convictions.

### New core children's workers – 1 July 2015

The restriction applies immediately (i.e., from 1 July 2015) to people applying for new roles as core children's workers.

This means that specified organisations could be charged with an offence under the VCA if they employ or engage someone as a core children's worker from this date who has a conviction for a specified offence and who does not have an exemption.

### Existing core children's workers – 1 July 2016

Core workers already in a role that have a conviction for a specified offence will have until 1 July 2016 to seek an exemption. From 1 July 2016 if a specified organisation believes that a worker whom it employs or engages has a conviction for a specified offence, the organisation must immediately:

- Suspend the worker from all duties that require or enable him or her to act as a core worker, and continue to pay the worker on whatever basis would apply to the worker had he or she been suspended on the grounds of serious misconduct.
- Specify the period of suspension, which must be not less than five working days (but may be extended from time to time). The period of suspension is a question for the specified organisation to determine – a longer suspension will give the person more time to seek an exemption or establish they do not have a specified offence, but suspensions will need to be paid as noted above.
- Tell the worker the reason for the suspension and the grounds for the organisation's belief.

- Advise the worker that he or she may respond to the grounds for the organisation's belief.

Once a worker is suspended the employer must not terminate the worker's employment or engagement until at least five working days after the suspension begins (unless the person's employment or engagement is terminated sooner for reasons unrelated to that suspension).

At the end of the period of suspension, if the suspension is not extended the employer must terminate the worker's employment or engagement as a core worker if the employer believes on reasonable grounds that the restriction applies to that person. While workers may respond to the grounds for the organisation's beliefs (for example, by establishing they have an exemption), organisations are under no obligation to extend the period of suspension as long as they believe on reasonable grounds that the restriction applies.

Workers who are terminated due to the Workforce Restriction are entitled to no compensation or other payment, despite anything to the contrary in any contract or agreement, and the termination is deemed to be a justifiable dismissal for the purposes of Part 9 of the Employment Relations Act 2000. If you are unsure of your obligations as an employer, we advise that you seek independent advice.

From 1 July 2016 employers who do not follow these requirements could be charged with an offence under the VCA.

## Exemptions from the Workforce Restriction

From 1 July 2015, people with specified convictions will be able to apply for a Core Worker Exemption. The Core Worker Exemption process will be administered by the Ministry for Social Development on behalf of the key government agencies responsible for the VCA. Information about how to apply is available at [www.childrensactionplan.govt.nz](http://www.childrensactionplan.govt.nz).

In some cases there will be clear evidence that the person with a specified conviction poses no undue risk to the safety of children. Mitigating circumstances or rehabilitation are examples of evidence that might be taken into account by decision-makers.

The onus will be on the applicant to prove they do not pose an undue risk to children. The provision for an exemption process recognises that people can change and that certain historic convictions may not mean that a person is still a risk. Child safety will always come first and the exemption process will be a robust and fair consideration of individual circumstances.

If an individual is granted a Core Worker Exemption it is (subject to conditions) no longer against the law to employ that person as a core worker. However, it is still up to the employer to decide whether or not a person with a Core Worker Exemption is suitable for the role they are applying for.

As an employer, or as the person responsible for a relevant educational or vocational training course, you may need to verify that a current/prospective employee or student is a Core Worker Exemption holder.

To do this, you must enquire against the Core Worker Exemption register using the Core Worker Exemption Verification Enquiry form available on [www.childrensactionplan.govt.nz](http://www.childrensactionplan.govt.nz).

Confirmation of an individual's status will only be released to employers or training institutions with the confirmed consent of the individual in question.

## Offences under the VCA

Organisations that employ or engage (or continue to employ or engage) a person as a children's worker beyond the relevant dates without ensuring that the required checking is done, are liable upon conviction for a fine of up to \$10,000 per infraction.

An organisation that knowingly or recklessly employs a person as a core children's worker who has a specified conviction, and no exemption, beyond the relevant date is liable upon conviction for a fine of up to \$50,000 per infraction.

In both cases, Crown organisations may also be held liable and fined.

As the requirements come into force, the government agencies responsible for enforcing them will be taking an educative approach. This means that in the first years of operation, agencies will place emphasis on offering information, advice and support in the first instance to build the knowledge base and capability of the workforce, rather than prosecuting offences.

However, in cases where the breaches are on-going or particularly serious, charges may still be laid.

## Defences to prosecution under the VCA

There are two defences to prosecution under the VCA that are specific to the legislation. First, where the specified organisation took all reasonable steps to ensure that a safety check of the person was completed, they have a defence to prosecution under the VCA. Accurate record keeping will be important evidence to establish this defence.

Second, a specified organisation has a defence to prosecution under the VCA if they considered that an emergency had occurred, or unexpected conditions had arisen, that increased the risks to any children to whom it provides regulated services, and:

- In order to reduce the risks to those children, the organisation employed or engaged additional children's workers.
- Any of those children's workers who were not safety checked were employed or engaged by the specified organisation for no more than five consecutive working days.

## Compliance and audit requirements

Where organisations are monitored or audited by a government agency, compliance may be checked. In addition, government agencies may request information from specified organisations to assess whether checking has been done to the required standard.

Under section 39 of the VCA, the agencies may require any specified organisation to provide, information about the safety checking of children's workers employed or engaged by the organisation.

Organisations may receive addition sector-specific guidance on compliance and audit requirements. However, the following general points should also be considered:

- To satisfy the VCA, specified organisations should maintain accurate records about the safety checking process, including when each aspect of the check was completed. If relying on checks conducted by other individuals or organisations, records will need to provide assurance that the check was adequately conducted, including assessment of the risk the person would pose if employed as a children's worker.
- If a New Zealand Police vet is done as part of a safety check, employers may be advised by New Zealand Police to destroy New Zealand Police-supplied vetting information after a period of time, unless required to retain it for auditing purposes. If you destroy the vetting information, you will still need to keep a record of who has been New Zealand Police vetted and when.

## Concerns about an existing Children's Worker being safety checked

Organisations should have clear policies (as part of their child protection policy) about responding to concerns about staff members employed by the organisation.<sup>2</sup> It is expected that all allegations that a staff member has, or may have, abused a child accessing services from your organisation are taken seriously. Measures need to be put in place to ensure the safety of all children the worker may have contact with in the course of their work, pending the outcome of an investigation into the allegations.

This should include taking appropriate action to ensure the person concerned does not have unsupervised contact with children until the employer believes on reasonable grounds that there is no risk to children.

You should notify Child, Youth and Family of the suspected child abuse or, if the child is in immediate danger, contact the New Zealand Police immediately. Safety of the child or children is paramount.

The decision to follow-up an allegation of abuse by an employee should be made in consultation with Child, Youth and Family and the New Zealand Police. This will ensure any actions taken do not undermine any investigations being conducted by the external agencies.

If, after discussion with Child, Youth and Family and/or the New Zealand Police, there is a need to pursue an allegation as an employment matter, you should:

- Advise the person concerned.
- Inform them that they have a right to seek legal advice.
- Provide them with an opportunity to respond.

The person should also be informed of their right to seek support from the relevant union or representative body.

It is vital to follow your organisation's Human Resources policies and disciplinary procedures, guided by the worker's employment contract/collective employment contract and relevant statutory obligations.

Employers are encouraged to seek advice from a human resources or employment law specialist. It is expected that Child Protection Policies and other employment policies such as codes of conduct would be developed and implemented in good faith consultation with employees and their unions, and that the policies would include relevant practice codes that apply to all staff within your organisation.

For further information see *Safer Organisation, Safer Children* (available at [www.childrensactionplan.govt.nz](http://www.childrensactionplan.govt.nz)). Section 5 *Guidance on responding to suspected abuse or neglect and other concerns* will be of particular use.

## Concerns about a person applying to be a children's worker

Organisations should have clear policies (as part of their child protection policy) about responding to concerns about people applying for roles with the organisation.

It is expected that if a child or someone else makes an allegation, or raises a concern about child abuse, the child and any other children with whom the alleged offender would have contact, are not exposed to unnecessary risk.

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<sup>2</sup> Including those staff members who are volunteers or unpaid workers undertaking educational or vocational training

You should notify Child, Youth and Family of the suspected child abuse or, if a child is in immediate danger, contact the New Zealand Police immediately. Safety of the child or children is paramount.

The decision to follow-up a concern about a person you have safety checked should be made in consultation with Child, Youth and Family and the New Zealand Police. This will ensure any actions taken do not undermine any investigations being conducted by the external agencies.

## Confirming identity

There are reported cases of people gaining employment in the children's workforce using another's identity and credentials. Confirming a person's identity is a very important part of safety checking.

The following standard must be used to confirm identity. It is informed by the Department of Internal Affairs', *Evidence of Identity Standard v2.0*. Specified organisations must use one of the two methods (a) and (b) below:

### Method (a) – Use of electronic identity credential

A specified organisation may confirm the identity of the children's worker by:

- Verification of the children's worker by electronic means through use of an electronic identity credential as defined in the Electronic Identity Verification Act 2012, such as the RealMe identity verification service; and
- Establishing the uniqueness of the claimed identity of the children's worker by conducting a search of its personnel records to ascertain whether the claimed identity is being used by another person employed or engaged (either currently or in the past) by the specified organisation.

RealMe enables people to access multiple online services with the same username and password. A verified RealMe account goes further by enabling people to prove their identity online. Upgrading to a verified account involves an application process, including having a photograph taken at a participating New Zealand Post retail outlet. For more information see: [www.realme.govt.nz](http://www.realme.govt.nz).

### Method (b) – Use of appropriate regulatory process

#### A. Establishing that the identity exists

A specified organisation must establish that the claimed identity of the children's worker exists by checking (see page 19 for more information on document verification) an **original primary identification document**. This is a closed list of documents and one of the below **must** be used:

Document/record	Issuing agency
New Zealand Passport	Department of Internal Affairs
Overseas passport (may include New Zealand immigration visa or permit issued by the Ministry of Business, Innovation or Employment (Immigration New Zealand))	Overseas authority
New Zealand emergency travel document	Department of Internal Affairs
New Zealand refugee travel document	Department of Internal Affairs
New Zealand certificate of identity (issued under the Passports Act 1992 to non-New Zealand citizens who cannot obtain a passport from their country of origin)	Department of Internal Affairs
New Zealand certificate of identity (issued under Immigration Act 1987 to people who have refugee status)	Ministry of Business, Innovation or Employment (Immigration New Zealand)
New Zealand Firearms license	New Zealand Police
New Zealand full birth certificate issued on or after 1 January 1998 carrying a unique identification number	Department of Internal Affairs
New Zealand citizenship certificate	Department of Internal Affairs

B. Establishing that the identity is a living identity and that the person presenting uses the identity in the community

A specified organisation must also establish that the claimed identity of the children's worker is living and that they use the identity in the community by verifying an **original secondary identity document**. This is a closed list of documents and one of below **must** be used:

Document/record	Issuing agency
New Zealand driver licence	NZ Transport Agency
18+ Card	Hospitality New Zealand Incorporated
Community services card	Ministry of Social Development
SuperGold Card	Ministry of Social Development
Veteran SuperGold Card	Ministry of Social Development
New Zealand student photo identification card	New Zealand educational institution
New Zealand employee photo identification card	Employer
New Zealand electoral roll record	Electoral Enrolment Centre of New Zealand Post Limited
Inland Revenue number	Inland Revenue Department
New Zealand issued utility bill, issued not more than six months earlier	
Steps to Freedom form	Department of Corrections

C. Establishing that the children's worker links to the identity

A specified organisation must establish that the claimed identity of the person presenting (the children's worker) is linked to the presenter. This can be done in two ways:

- Option (i) – By checking one of the two forms of identification used to satisfy requirements A or B above in person against the children's worker. This requires that one of the two forms of identification presented must be photographic.
- Option (ii) – By using an identity referee as described below.

If relying on option (ii), use of an identity referee, the children's worker must produce with their identity documents:

- The name and contact details of an identity referee.

AND EITHER:

- A photograph of the children's worker authenticated by the identity referee. The identity referee needs to write on the back of the photograph "Certified true likeness of [full name of person]" (or words to that effect), and sign and date the certification.

OR

- A verification statement signed and dated by the identity referee verifying that the primary identity document produced by the children's worker relates to that children's worker.

The specified organisation must determine who qualifies as an identity referee for their organisation, and the criteria must include requirements that the identity referee:

- Has known the children's worker for at least 12 months
- Is at least 16 years of age
- Is not related to the children's worker and not part of the children's worker extended family
- Is not a spouse or partner of the children's worker
- Does not live at the same address as the children's worker.

D. Establishing that the children's worker is sole claimant of the identity

The specified organisation must establish the uniqueness of the claimed identity of the children's worker by conducting a search of its personnel records (if any) to ascertain whether the claimed identity is being used by another person employed or engaged (either currently or in the past) by the specified organisation.

This requirement is part of the *Evidence of Identity Standard*, and will be of most use to large organisations.

## Identity verification for periodic rechecking

More limited identity verification is required for three-yearly rechecking:

- The specified organisation must confirm that a person has not changed their officially recorded name from the name on the documents produced during the initial identity confirmation (i.e., the presented primary or secondary document).
- If there has been a change to the person's officially recorded name since he or she was last safety checked, the person must reconfirm his or her identity by producing a supporting name change document relating to his or her name change.

Where no such name change has occurred, no further action is required.

## Verifying documentary evidence

All documentation sighted for identification purposes must be original. Where someone can only supply copies during the recruitment process, they must provide original documentation before they start work as a children's worker.

Documentation should be checked for authenticity. Warning signs include; rips, tears, discolouration or other damage, inconsistencies in lettering and inconsistent spelling of names or other details. Checks should be made across the same document and between documents. For more information see the Department of Internal Affairs *Evidence of Identity Standard Factsheets* available at [www.dia.govt.nz](http://www.dia.govt.nz).

Other specific services that may be available to specified organisations wishing to verify documents include the Department of Internal Affairs Identity Information Confirmation Service, which allows registered organisations to validate the information in official identity documentation, and the Immigration New Zealand VisaView service, which allows registered organisations to verify the information in immigration documentation, including passports.

## Name changes

Where the officially recorded name of a children's worker has changed, such that there is inconsistency across the identity documents provided, the specified organisation must sight evidence of the change of name. The following table of documents/records that may be used to evidence a change of name:

Document/record	Issuing agency
New Zealand birth certificate (issued for the purpose)	Department of Internal Affairs
Change of name by statutory declaration	Department of Internal Affairs
Change of name by deed poll	Department of Internal Affairs
New Zealand name change certificate	Department of Internal Affairs
New Zealand marriage certificate	Department of Internal Affairs
New Zealand civil union certificate	Department of Internal Affairs
New Zealand order dissolving marriage or civil union	Ministry of Justice
New Zealand order declaring marriage or civil union void	Ministry of Justice

In many situations it is okay for individuals to use whatever name they choose. While employers may need to establish a link between the names originally and currently used by an individual, this should not prevent the individual from using their 'preferred name' as they work.

## Dealing with discrepancies

If a discrepancy is detected in the identity verification documentation provided by an individual or trusted referee, the following actions should be taken:

- First seek an explanation from the applicant, unless it is clearly apparent that it is a fraudulent matter, in which case the matter should be forwarded directly to the relevant authorities (e.g., the NZ New Zealand Police for a potentially criminal matter, the issuing body of the documentation, or the relevant professional body or licensing authority).
- Given the risks involved, discrepancies between documents regarding names or dates/places of birth should be resolved before continuing with the recruitment process. A person should not be employed or engaged as a children's worker if satisfactory explanations cannot be obtained.

## Carrying out interviews

All new children's workers must be interviewed as part of the safety checking process.

The way someone responds to careful questioning can provide substantial insight into their attitudes towards children. An interview also provides the opportunity to confirm the information collected through the application process and to clarify information previously given.

Interviews should be face-to-face, but may be via telephone or other communications technology. Where face-to-face interviews are not done, specified organisations should be aware of the limitations of alternative methods.

Specified organisations should consider whether to:

- Conduct two interviews. This enables follow up and clarification on any issues you have identified. Reference and other checks can be carried out between the two interviews.
- Have a small panel of people for at least one of the interviews, allowing for multiple perspectives.

Interviewers should be chosen carefully for their experience, knowledge and skills, with at least one having broad child protection knowledge.

### Conducting the interview

An interview should have a definite structure and include planned, open questions that invite a descriptive response. Open questions are ones that start with words like *what, where, who or how*. Consideration should be given to:

- A time and location for the interview that is likely to be comfortable for the children's worker.
- Ensuring that the people interviewing are confident and comfortable asking questions about child safety.

Interviewers should use a pre-planned question programme designed to get children's workers to describe their own past behaviours, beliefs and attitudes.

Interviewers should avoid using too many closed questions. These are questions that invite a yes or no answer and generally start with words like *did* or *have*. Yes or no answers seldom provide useful insights into someone's safety.

While hypothetical questions can be useful to assess a person's attitudes, responses can be theoretical or idealised. Instead, ask them to describe a specific example from their own experiences.

### Example questions

The following example questions may be considered as a guide to the types of questions that are helpful to ask during an interview.

Questions that provide information about the children's worker themselves:

- Whether complaints have ever been made about their professional practice and how they have responded to them.
- Whether they have ever been convicted of an offence.
- Whether they have ever been the subject of a complaints procedure during their employment.
- Reasons for leaving previous jobs.

Questions that explore the children's worker's attitudes:

- Whether there has ever been a time when they have had to deal with the following situations, including the process and outcome. If that situation has not arisen, what they would do if:
  - A child or young person disclosed abuse.
  - A child or young person was cheeky.
  - A child or young person hit them.
  - They discovered two children fighting or engaged in sexual play or who had stolen property.
  - A child or young person invited them to become involved in intimate or touching behaviour.
  - A child or young person threatened to make a false allegation of abuse about them.

Questions that indicate the children's worker's views on child safe practice:

- How they believe children should be disciplined.
- Their thoughts on being alone on the job with children and young people.
- The chances of abuse allegations being made about them, if they were accepted for the job.

Questions that describe the children's worker's experiences and relationships in working with children:

- What rewarding experiences they have had working with children.
- What they think constitutes professional practice when working with children.
- Other relationships they have with children outside the working or volunteer environment.
- The reason they think they get along with children or why children like them.
- The kind of relationships they hope to develop with the children and families in this organisation.

## Reference checking and other information from third parties

Referees are a valuable source of information and can be used to confirm information given by potential children's workers.

While only one referee must be contacted, where possible three referees should be gathered. Referees must not be related to the person or part of their extended family.

Referees should be contacted in person – usually by telephone (or equivalent technology). If this is not possible, questions may be given to a referee to be answered in writing. Written questions should be followed-up by telephone.

Referees should be chosen for their ability to answer questions about the children's worker's safety to work with children, for their recent knowledge and understanding of the person, and for the role they held in relation to them.

The current or immediate prior manager or supervisor of the children's worker should be contacted. However, they may not want it known that they are applying for a new position and you should respect that wish. Consider whether the employer can be contacted once a job offer is about to be made. If an immediate prior manager cannot be contacted, at least one of the referees selected should be a previous direct line manager.

When a referee is involved with a business or organisation, it is safer to contact that person on a business telephone number (rather than a mobile phone) to confirm they genuinely work for that employer.

The children's worker consent should be obtained before referees are contacted. If they give general consent it is good practice to advise them before contacting someone they have not provided as a referee. This ensures their privacy is respected and they can opt out of the application process at this time if they wish, or explain why they believe that referee is inappropriate.

Disciplinary action regarding child safety should be investigated fully. The children's worker should be given an opportunity to provide an explanation and their response should be compared to the explanation provided by the referee.

All allegations should be treated with caution and the safety of children should be the primary consideration. Sometimes it may be difficult or impossible to reply to historical allegations, especially when firm evidence is lacking or they have never heard the information previously. To be as fair as possible to the potential children's worker, you should consider other sources of information that can help you in reaching an overall decision about their safety to work with children.

Referees may need to be reminded that they should be honest and ensure they do not make misrepresentations. They should also be asked, preferably at the beginning of the conversation, whether they are willing for their comments to be shared with the children's worker. Be aware that referees are entitled to ask that the reference be given in confidence.

### Written references

Where possible, written references should not be used: referees are likely to be more explicit in person and on the telephone than in writing.

Where written references are relied upon, organisations should assess:

- How recent the reference is.
- How specific the reference is to the issue of suitability to work with children.
- Whether there is opportunity to follow up with the referee and to clarify comments or gain further information.
- How the referee describes the relationship with the potential children's worker.

- References provided by a referee who is a close friend or relation of the children's worker will be less useful. Similarly, references supplied by someone who knows little about the children's worker will not necessarily be reliable. Work relationships that occurred as close to the current day as possible are preferred.

Generic written references are less helpful, such as those addressed to "whom it may concern".

References that are undated, or where the name, role or contact details of the referee are not clear, are not useful and should not be relied upon.

## Developing questions

Organisations should only ask referees questions that clearly relate to the person's suitability for the job.

The most useful questions are open ended and relate specifically to the potential children's workers attitudes and past behaviours in the employment context and to how they relate to children. However, closed questioning of referees, asking for specific factual information (e.g., whether the person has been disciplined for misconduct involving children) can also provide useful information.

Objective information such as whether complaints were substantiated, is also helpful, as it relies less on personal opinion. It is good practice to provide referees with clear information about the role the applicant is applying for, including a copy of the job description.

The following example questions may be considered as a guide to the types of questions that are helpful to ask during a reference check:

- Whether the referee considers the children's worker suitable for the role and if not, why not.
- Whether they consider the children's worker suitable to work with children and if not, why not.
- Details, including duties, position and job title, about the children's worker's employment.
- Specific evidence that the referee can verify, about the children's worker's performance during employment.
- The specific reason that the person left that role.
- Details of any disciplinary procedures that resulted in formal action against a children's worker.
- Details of any concerns relating to the safety and welfare of children, or the children's worker's behaviour towards children.
- Whether there were any sanctions relating to the safety and welfare of children, including whether or not such sanctions have expired.
- Whether they would employ the children's worker again.

### Examples of specific questions:

- Do you trust the children's worker in roles of responsibility over children, and if not, why not?
- Have you ever had reason to suspect the children's worker's honesty?
- Has the children's worker ever mislead you about a matter relating to a child?
- Has the children's worker ever been disciplined for misleading or fraudulent conduct relating to a child?
- How would you describe the way the children's worker acts around children?
- Was the children's worker ever subject to formal disciplinary actions or complaints regarding their behaviour towards children?

- Do you think the children's worker should be unsupervised around children?
- Was the children's worker ever subject to formal disciplinary action or complaints regarding their disciplinary techniques?
- How well do you think the children's worker understands children?

## Seeking information from relevant professional organisations, licensing authorities, or registration authorities

As part of checking, specified organisations must seek information from any relevant professional organisations, licensing authorities, or registration authorities. The information available will vary based on the body, and there is no requirement on these bodies that any particular information be provided.

Organisations may satisfy this requirement by contacting the organisation or by searching its public-facing records (e.g., an online register).

Organisations may also satisfy this requirement by confirming that the children's worker is currently a member of the organisation, or is currently licensed or registered by the authority.

## New Zealand Police vetting

A New Zealand Police vet must be obtained for all children's workers being safety checked. The purpose of the Police Vetting Service is to contribute to public safety, particularly the protection of vulnerable members of society.

Where a children's worker holds a professional registration or a practicing certificate, and at least three yearly New Zealand Police vetting is a condition of holding that registration or certificate, then evidence that this registration or certification is current may be taken as meeting the requirement for a New Zealand Police vet.

Only approved agencies or individuals can use the Vetting Service. To become approved, you must meet the required criteria. For more information please refer to the Police Vetting Service's Approved Agency Criteria: <http://www.police.govt.nz/sites/default/files/publications/new-zealand-police-vetting-service-approval-criteria.pdf>.

You or your organisation may seek approval to use the Police Vetting Service via a secure email: [queryme@police.govt.nz](mailto:queryme@police.govt.nz).

If you are approved you will be expected to agree to the terms and conditions, which include maintaining the security and confidentiality of information received. Agencies will be required to sign the new 'Approved Agency Agreement' which contains all of the terms of service for Police vetting and will be available on the New Zealand Police website vetting pages before the 1 July 2015.

The Police Vet will provide details about any convictions, including the location of the court, the date of the offence and the sentence imposed. However, the Police Vetting Service is not limited to providing information about convictions and may give:

- Information on active charges and warrants to arrest.
- Information about any concerns the New Zealand Police have in any context, including family violence, even if: there have not been charges; charges have been withdrawn, or dismissed; or the person has been acquitted (found not guilty) of a charge.
- Any other relevant information received or obtained by the New Zealand Police.

The criminal history section of the vetting result will set out in a clearly labelled table any VCA specified offence convictions where these convictions are disclosed, i.e., for a core worker vetting request where the applicant has such convictions.

New Zealand Police may issue a statement regarding the existence of relevant non-disclosable information, without details, where disclosure would breach a Court order or statutory provision (such as name suppression or Youth Court outcomes) or otherwise be likely to prejudice the maintenance of the law – for example, if it was provided to New Zealand Police with an expectation of confidence, or is in the nature of intelligence, or relates to an active investigation or an individual's safety.

Police vetting requires the consent of the children's worker. Children's workers should be provided with a New Zealand Police Vetting Service Request and Consent Form to complete and sign. Agencies may, in agreement with New Zealand Police, incorporate the requirements of the Request and Consent Form into their own application forms to avoid duplicate collection of personal data from the applicant.

If the specified organisation requesting the Police Vet has incorporated the Request and Consent Form within its own application form then the children's worker should be provided with either a copy of the Police Vetting Service - Information Sheet for NZ Vet Check (New Zealand-based checks) or be directed to [www.police.govt.nz](http://www.police.govt.nz).

The processing period for Police vetting may be up to 20 working days (although in periods of peak demand processing times may be longer). The results vet must be considered by the specified organisations prior the person commencing work as a children's worker.

## The Criminal Records (Clean Slate) Act 2004

Some criminal records will not be available because of the Criminal Records (Clean Slate) Act 2004. Under this Act, eligible offenders will be able to have their criminal record or information concealed (including Police Vetting Service and criminal records checks).

The VCA has amended the Criminal Records (Clean Slate) Act 2004 to facilitate the operation of the Workforce Restriction. Where a person has a conviction for a specified offence, and is applying for (or continuing in) a role as a core children's worker, any convictions for offences specified in Schedule 2 of the VCA will be disclosed in the vetting result.

### Overseas criminal convictions

It is recommended that you ask children's workers who have lived overseas to provide copies of police certificates from their countries of citizenship and from any country in which they have lived for one or more years within the last ten years.

When a children's worker cannot provide a police certificate (some overseas jurisdictions do not provide these), it will be necessary for them to give you proof of their attempts to obtain a certificate. They should also make a statutory declaration (as per the form in schedule 1 of the Oaths and Declarations Act 1957) that states whether they have any overseas criminal convictions or not.

Just because a person is not recorded as having a criminal record, does not mean they have not engaged in behaviour that is an offence in New Zealand. Some things that are illegal in New Zealand are not illegal in other jurisdictions. Similarly, some overseas convictions may be for behaviour that is not illegal in New Zealand.

The New Zealand Police has a service which enables approved agencies to make an optional request for an Australian criminal history check. To access this service approved agencies must have signed the New Zealand Police 'Approved Agency Agreement' and then completed the sections of the New Zealand Police Vetting Request and Consent Form for an Australian criminal history check. The service provider in Australia charges a fee for this service; New Zealand Police will pass this fee on to agencies making requests for Australian criminal history records.

### Assessing criminal histories

The VCA contains a list of certain serious offences in schedule two, referred to as specified offences. These are generally serious sexual or violent offences. The VCA Workforce Restriction makes it unlawful to employ people with convictions for specified offences in core children's workforce roles, unless the work has an exemption. For further information see page 13.

Even where the Workforce Restriction doesn't apply (or a person has an exception) you should collect enough information to understand the following factors and make an assessment of risk:

- The relevance of the conviction to child-related work and safeguarding children. An offence against children or other vulnerable people has an obvious relationship. Patterns of fraudulent offending can also be a concern, given the importance of trust in the children's workforce.
- The context of the role being screened for. A conviction for drink driving may be more prejudicial for a school bus driver than another role but may still give concern for working with children.
- How long ago the conviction was. Convictions followed by a long period without re-offending may indicate successful rehabilitation but doesn't guarantee it.
- The age of the children's worker at the time of the offending. Convictions occurring when the children's worker was young, followed by a sustained period of non-offending may indicate that the children's worker has successfully rehabilitated.

# Vulnerable Children Act – Scope of the Standard Safety Checking Requirements

Specified organisations are going to be required to undertake new standard safety checks of children's workers they employ or engage. This means they'll need to ensure that:

**A** Children's workers they employ or engage (including contractors) are safety checked to the required standard

**B** Three-yearly re-checking is done for all children's workers they continue to employ or engage

**C** They do not employ or engage any person as a core worker (see definition 3 below) who has a specified offence, unless the worker has an exemption.

## There are three steps to applying the Act:

### 1. Is an organisation a specified organisation?

- ♦ Is it any of the State services (section 2 State Sector Act 1988)?; or
- ♦ Is it receiving money from a State service to provide regulated services (unless it's receiving money via individualised funding arrangements)?
- ♦ **and** Does it employ or engage children's workers to perform a regulated service?

#### What are the regulated services?

Any service that is listed in Schedule 1 of the Act (as listed on the following page)

**Specified organisations are subject to the Act**

### 2. Are the specified organisations employees or contractors "children's workers"?

Children's workers:

- ♦ People providing a regulated service; and
- ♦ Whose work may or does involve regular or overnight contact with a child or children; and
- ♦ This takes place without a parent or guardian of the child, or of each child, being present

Regular or overnight: at least once a week; or on at least 4 days each month, or overnight

Contact: physical, oral communication or via electronic communication

**These workers need to be safety checked**

### 3. Are any of the specified organisations employees or contractors "core children's workers"?

Core children's workers are children's workers whose work requires or allows them to be:

- ♦ The only children's worker present; or
- ♦ The children's worker who has primary responsibility for, or authority over, the child or the children present

**Workers who have specified convictions cannot be employed in these roles unless they have an exemption**

