

VULNERABLE CHILDREN ACT: Proposed elements of the standard safety check

About this paper

1. As part of the Government's commitment to a safe and competent children's workforce, the Vulnerable Children Act 2014 (the Act) has introduced new requirements for safety checking people who work with children.
2. While the Act describes these required safety checks in broad terms, it does not provide detail on what actions must be taken to fulfil each element of the check. This detail needs to be provided in regulations made under the Act.
3. In advance of the regulations being drafted, the team leading this work is seeking feedback on the proposed content of the standard safety check. This feedback will inform advice provided to Cabinet, and guide further policy development.
4. To support this process, this paper provides an overview of how the legislation works, outlines the team's initial thinking on possible safety checking elements, and poses three questions to guide feedback.

How the new requirements will work

5. Only certain workers will be legally required to be safety checked to the new standard, and different categories of worker will need to be checked at different times.
6. The Act defines those who will need to be safety checked, using three steps:
 - 6.1 the requirements only apply to organisations who provide **regulated services** (described in detail in schedule 1) of the Act
 - 6.2 of the organisations who provide regulated services, only those **funded by the state** are included
 - 6.3 for these "specified organisations" (those that are funded by the state to provide regulated services, as above), only their **paid workers** who have **regular or overnight contact** with children will be required to be safety checked.
7. It is proposed that the new safety checking requirements will be introduced by 1 July 2015. The checks are then phased in over four years.
8. The legislation divides the children's workforce into two parts: the "core workforce" of higher risk roles with unsupervised child contact, or primary responsibility for children, and "non-core workforce" roles, which are lower risk. There are different introduction dates for each part:

Core Workers	Non-core workers
Core workers <i>starting in a new role</i> will need to be safety checked before commencing work from 1 July 2015	Non-core workers <i>starting in a new role</i> will need to be safety checked before commencing work from 1 July 2016
Core workers <i>continuing in a current role</i> , will need to be safety checked by 1 July 2018	Non-core workers <i>continuing in a current role</i> , will need to be safety checked by 1 July 2019

Proposed elements of the new standard safety check

9. Based on research, analysis and consultation that was undertaken to support the development of good practice guidelines for safety checking (another part of the Children's Action Plan), the project team has identified five components that are, in our view, necessary for a safety check that creates reasonable confidence that the checked worker does not pose an undue risk to the safety of children.
10. These components are:
 - 10.1 an identity verification component based on a Moderate standard, as described in the Department of Internal Affairs Evidence of Identity Standard v2.0
 - 10.2 a Police vetting component requiring all children's workers subject to the safety checking requirements to be Police vetted at least every 3 year
 - 10.3 a reference checking/good character certification component that would require that all workers have their suitability to work with children endorsed formally by a third party
 - 10.4 an interviewing component requiring that children's workers applying for new roles be questioned directly for the purpose of ascertaining their suitability to work with children
 - 10.5 a risk assessment component requiring a structured consideration of the specific child-safety related risk of a given role, assessed against available information about the candidate.
11. These components have been considered in the context of the general risk profile of the children's workforce. In the cases where levels of risk are higher, it may be that additional measures are needed (e.g., as part of the approvals process for a Child, Youth and Family Residency, or as a condition of professional registration).
12. At this point, the project team has not identified a need to differentiate the required safety checks by occupation, or for core or non-core workers. However, it should be noted that many of the components (e.g., risk assessment) involve consideration of the specific circumstances of the role, and so will naturally scale to address differences in risk.
13. While the project team believes these checks to be appropriate for all new workers, it is recognised that some of these proposed elements are not suitable for workers already in roles, or for workers being rechecked (as required every three years by the Act).
14. For these workers, it is proposed that only identity verification (if not done before to the Moderate standard), updating of the Police vet, and a check of professional registration status be done. This would give employers up to date information, without requiring forms of screening inappropriate within an existing employment relationship.

Detail of the requirements for each element

15. For each of the five elements identified above, additional detailed requirements have been developed. These are intended to assist employers undertaking the checks to do so in a robust manner.

Identity verification

16. Identity verification is important for linking a person to information held about them. For example, employers can only rely on a clean Police vet if they have confidence that the person named in the vetting report is the person applying for the role.

17. The Department of Internal Affairs has produced guidance on robustly verifying identity: the Evidence of Identity (EOI) Standard v2.0. This standard is a part of a suite of authentication standards developed by the Department to provide a framework for consistent authentication of identity by agencies. The EOI Standard also provides good practice guidance about the required process for initial establishment and subsequent confirmation of an individual's identity.
18. The EOI Standard takes users through a two-step process. The first is establishing the level of identity-related risk attached to a role. The second is determining a level of evidence that establishes identity to the necessary level.
19. By surveying a range of roles, it was determined that children's workers pose a Moderate level of identity-related risk. A process was then developed, in consultation with the Department of Internal Affairs, which met this standard. This process is outlined in **Annex A**.
20. Given identity verification's technical nature, the proposed requirements would prescribe in regulations the documents that should be viewed, and the checks that should be done to verify their details. This technical detail would also be supported by guidelines.
21. The proposed check would also allow for circumstances where a person may not be able to provide the necessary documentation (e.g., refugees), by permitting the use of an identity referee (similar to the process for applying for a New Zealand Passport).
22. Organisations accessing the Police vetting service will also be required to verify identity to an equivalent standard. Where this applies, there will be no need to do the same checks twice.
23. To reflect increasing usage, the regulations could also provide for electronic verification of identity using services including, but not limited to, the verified RealMe service.

Police vetting

24. The Police vetting service allows employers to access information, on a consent basis, about candidates held by the Police. It is not limited to information about convictions, and may also give information about charges and warrants for arrest, or other relevant information the Police have about an individual.
25. The proposed check would require all workers subject to the safety checking requirements to be Police vetted at least every 3 years. This will ensure that new information about the candidate that has come to the Police's attention is passed onto the employer.
26. It is important to note that a Police vet is a 'point in time check', and the results should not be kept and relied upon for long periods of time – the Police vet is not intended to be portable. For example, eligibility to conceal offences under the Criminal Records (Clean Slate) Act may change over time. By regularly updating Police vets, information held by the Police will be appropriately fed into the safety checking process.
27. Consequently, it is proposed that every worker starting with a new employer would need to be Police vetted. It is also proposed that during the processing time for the vet (up to 20 working days) new workers would not be able to have regular or overnight contact with children. Any potential disruption to service delivery could be managed through the defence in section 30 of the Act – employees can, in emergencies, work with children for up to five consecutive working days while waiting for the results of a safety check.
28. The regulations would also provide that existing professional registered or licensed people who currently undergo a three year Police vet are exempt from the requirement until their next three year check. This would avoid unnecessary duplication. Professional and or licensing bodies that

do not Police vet members at least every three years may want to consider introducing this minimum standard.

29. Guidelines will be produced that provide advice on interpreting the results of the Police vetting service, including understanding the use of the “red stamp” to mark persons unsuitable to work with children, and practical guidance on evaluating conviction and charging histories.

Reference checking/good character attestation

30. While Police vetting is important for ensuring employers have access to information about the candidate, a clean check does not guarantee a candidate is suitable for a role, as abusers may not yet have come to the attention of the Police. In fact, research shows that many abusers are able to offend for a period of time before being convicted of an offence. This concern is why it is proposed that the standard safety check include other elements.
31. Information from third parties is a key way that employers obtain meaningful information about the suitability of candidates. Checking with a referee can identify problems or concerns that will not be formally recorded anywhere else. Consequently, the proposed check includes a reference check/evidence of good character.
32. The number, form and type of these references (e.g., prior employer versus character reference) should not be prescribed (as this would produce unnecessary inflexibility). However supporting guidelines would provide recommendations about good practice in this area.
33. The regulations would also require that employers seek a work history from candidates for roles in the children’s workforce. This would give employers the information needed to assess the relevance of supplied references.
34. For candidates with professional registrations, it is also proposed that employers be required to seek evidence of good character from the registration body. Given differing processes between registration bodies, this requirement would be broad, and could be satisfied by confirming the status of a current practising certificate and confirming that the candidate has no outstanding disciplinary concerns.

Interviewing the candidate

35. It is proposed that all children’s workers should be questioned directly to ascertain their suitability to work with children. This will provide an opportunity for employers to gather information about a person’s attitudes and past behaviours, which can provide important insight into their suitability.
36. As with reference checking, the number, form and type of these interviews (e.g., panel interview, specific lines of questioning) would not be prescribed (as this would produce unnecessary inflexibility), although supporting guidelines would again be provided. Guidelines will also outline specific types of questioning methods that could help to illicit information as to the suitability of the person to work with children.
37. It is recognised that the regulations would also need to account for circumstances where face-to-face interviews are not practical (e.g., overseas pre-appointments), by allowing for telephone or web-based communication tools, such as “Skype” or “Facetime”. Including this requirement would also provide an important procedural safeguard to ensure that candidates are given an opportunity to respond to any concerns about their suitability.

Risk assessment

38. The legislation requires that employers undertake a risk assessment that assesses the risk the person would pose to the safety of children if employed as a children's worker.
39. It is proposed that the regulations not add detail to this. Employers will be required to assess the candidate for suitability to work with children, on the basis of information gathered, and the relative risk associated with the role being screened for.
40. As proposed, the regulations will not require that particular decisions are made, or that a particular process is followed, but instead require employers to undertake the assessment above.
41. Employers would be obliged to turn their mind to relevant considerations, and will be encouraged to use the information they have obtained, while emphasising the need for professional judgment.
42. As with the other elements, guidelines will provide information on carrying-out robust and fair risk assessments.

Other elements of the standard safety check

43. In addition to the above key elements, it is proposed that the regulations should also include the following supporting provisions:
 - 43.1 a requirement that specified organisations categorise the roles they are undertaking safety checking for, into either the "core" or "non-core" children's workforce as defined in the Act – this will inform the risk assessment, and assist determination of the application of the 'workforce restriction', described below.
 - 43.2 a requirement that anyone carrying out a safety check on behalf of a specified organisation must, wherever they suspect that a qualification or certification lacks veracity, verify the qualification or certification with the issuing body.
 - 43.3 clarification that the standard safety checking regulations are subject to, and in no way modify the employers' existing legal obligations, including (but not limited to) the Employment Relations Act 2000, the Privacy Act 1993, and the Human Rights Act 1993.

The workforce restriction

44. In addition to the standard safety checking requirements, the Act includes a restriction on the employment of persons with certain "specified convictions" from working as core workers. This restriction is likely to commence on 1 July 2015 for workers entering the core workforce and by 1 July 2016 for workers continuing in core workforce roles they already hold.
45. The restriction will be subject to an exemption process, which will be developed by the agencies responsible for implementing the Act ahead of the 1 July 2015 commencement date.
46. The specified convictions that bar a person from core workforce roles are listed in **Annex B**.
47. The presence of these convictions will be revealed by use of the Police vetting service, and the project team is working with the Police to establish processes to support employers to identify when a person is subject to the restriction.
48. Further information about the exemption process will run will be communicated early next year.

Questions for consideration

49. Does the standard safety check, as proposed, provide a check that should produce reasonable confidence that the safety checked individual does not pose an undue risk to the safety of children?
50. Are the components of the proposed standard safety check practical? Will there be any circumstances where they can't be completed in a timely manner?
51. What additional considerations or safeguards need to be included in a high quality check?

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Annex A – Moderate Evidence of Identity Standard

A standard safety check must meet or exceed the following standard for confirming identity:

1. Sighting of an original Category A identity document as listed in Schedule 1 (Schedule 1 would list the 5 acceptable Category A identity documents (birth certificate, passport, citizenship certificate, NZ certificate of identification or NZ firearms license)
2. Sighting of an original Category B identity document as listed in Schedule 2 (Schedule 2 would define Category B documentation as “Documentation that comes from a trustworthy source, includes the name of the person applying, and is dated”. It would then provide a non-exhaustive list of 6 common documents that fulfil this requirement)
3. One of the two documents sighted in 1. or 2. above must be photographic identification
4. Specified organisations should also conduct a search of their employment records to confirm that the identity claimed is unique.
5. Where the process in 1. to 4. above cannot be completed, despite the specified organisation taking all reasonable steps, then the applicant will need to provide an identity referee statutory declaration in the form prescribed in Schedule 3 (Schedule 3 provides a form for completing the statutory declaration for the identity referee, modelled off of the one used to apply for a New Zealand Passport).
6. Where a candidate’s name has changed, such that there is inconsistency across provided identity documentation, evidence establishing the change of name must be sighted.
7. Where a verified electronic identity (e.g., a verified RealMe account) meets or exceeds the above standard, visual matching of photographic evidence of identity will be deemed to meet the identity checking standard.

Notes on the above identity verification process

The process for identity verification described above is based upon the Department of Internal Affairs Evidence of Identity Standard v2.0. It is intended to provide robust evidence of identity while still being practical to implement.

The identity referee process is provided for the small number of applicants who will not be able to provide the prescribed documentation (e.g. refugees).

Consultation with the Government Chief Information Officer will be required to ensure that the provisions relating to the use of electronic identity and access management systems such as RealMe are fit for purpose.

Annex B – Offences subject to the workforce restriction

1. An offence against any of the following sections of the [Crimes Act 1961](#) is a specified offence for the purpose of [Part 3](#):
 - (1) [section 98](#) (dealing in slaves);
 - (2) [section 98AA](#) (dealing in people under 18 for sexual exploitation);
 - (3) [section 128B](#) (sexual violation);
 - (4) [section 129](#) (attempted sexual violation and assault with intent to commit sexual violation);
 - (5) [section 129A](#) (sexual conduct with consent induced by certain threats);
 - (6) [section 130](#) (incest);
 - (7) [section 131](#) (sexual conduct with dependent family member);
 - (8) [section 131B](#) (meeting young person following sexual grooming, etc);
 - (9) [section 132](#) (sexual conduct with child under 12);
 - (10) [section 133](#) (indecency with girl under 12);
 - (11) [section 134](#) (sexual conduct with young person under 16);
 - (12) [section 135](#) (indecent assault);
 - (13) [section 138](#) (sexual exploitation of person with significant impairment);
 - (14) [section 139](#) (indecent act between woman and girl);
 - (15) [section 140](#) (indecency with boy under 12);
 - (16) [section 140A](#) (indecency with boy between 12 and 16);
 - (17) [section 141](#) (indecent assault on man or boy);
 - (18) [section 142A](#) (compelling indecent act with animal);
 - (19) [section 143](#) (bestiality);
 - (20) [section 144A](#) (sexual conduct with children and young people outside New Zealand);
 - (21) [section 144C](#) (organising or promoting child sex tours);
 - (22) [section 154](#) (abandoning child under 6);
 - (23) [section 172](#) (punishment of murder);
 - (24) [section 173](#) (attempt to murder);
 - (25) [section 177](#) (punishment of manslaughter);
 - (26) [section 178](#) (infanticide);
 - (27) [section 182](#) (killing of unborn child);
 - (28) [section 188](#) (wounding with intent);
 - (29) [section 189\(1\)](#) (injuring with intent to cause grievous bodily harm);
 - (30) [section 191](#) (aggravated wounding or injury);
 - (31) [section 194](#) (assault on child);
 - (32) [section 195](#) (ill-treatment or neglect of child or vulnerable adult);
 - (33) [section 195A](#) (failure to protect child or vulnerable adult);
 - (34) [section 198](#) (discharging firearm or doing dangerous act with intent);
 - (35) [section 204A](#) (female genital mutilation);
 - (36) [section 204B](#) (further offences relating to female genital mutilation);
 - (37) [section 208](#) (abduction for purposes of marriage or sexual connection);
 - (38) [section 209](#) (kidnapping);

- (39) [section 210](#) (abduction of young person under 16).
2. An offence that is equivalent to an offence against any section of the [Crimes Act 1961](#) referred to in clause 1, but that was committed against a provision of the Crimes Act 1961 that has been repealed, is a specified offence.
 3. An attempt to commit any offence referred to in clause 1 or 2, where the offence is not itself specified as an attempt and the provision does not itself provide that the offence may be completed on an attempt, is a specified offence.
 4. A conspiracy to commit any offence referred to in clause 1 or 2 is a specified offence.
 5. An offence against any of the following sections of the [Films, Videos, and Publications Classification Act 1993](#) is a specified offence for the purpose of [Part 3](#):
 - (a) [section 124](#) (offences relating to objectionable publications, involving knowledge);
 - (b) [section 127\(4\)](#) (exhibition to persons under 18);
 - (c) [section 131A](#) (offences relating to possession of objectionable publications, involving knowledge).
 6. An offence against [section 209\(1A\)](#) of the Customs and Excise Act 1996 is a specified offence for the purpose of [Part 3](#).