

Vulnerable Children Act 2014

Guidelines for Compliance in Universities¹

Introduction

This document has been produced by a working group convened by Universities New Zealand to provide an interpretation of the Act as it applies to Universities. It sets out to indicate what the Act appears to *require* of universities, and suggests ways of meeting these requirements. It is not a statement of what constitutes best practice across the wide range of circumstances in which the Act will apply. Individual groups are expected to use this document, in conjunction with the Act and its regulations, as a basis for developing best practice in the contexts in which they work.

- Either hard-copy or electronic records of the checks undertaken must be retained to provide an audit trail while they are current (i.e. for 3 years)
- Information collected in connection with this Act should be safe-guarded as required by the Privacy Act.

The Vulnerable Children Act (VCA) applies to *children's workers* providing a *regulated service* in a *specified organisation*. In the vast majority of instances, universities will not be specified organisations as defined under section 24 of the Act, because they are not a State Service (being excluded under section 2 of the State Sector Act), and tertiary education services are not a regulated service as defined in Schedule 1 of the Vulnerable Children Act. Exceptions may occur when universities explicitly provide state-funded, regulated services (under Schedule 1), such as formal provision of counselling services and formal provision of services of health practitioners e.g. through Student Health centres and teaching clinics, and make these available to those under 18 years of age. A second group of exceptions will be when students of universities or other tertiary providers are placed into specified organisations such as hospitals, medical practices, and education settings. These students may qualify as *children's workers* in terms of the act.

Student Placements into Specified Organisations

Prerequisites for the VCA to apply

The VCA applies to *children's workers* providing a *regulated service* in a *specified organisation*.

A *children's worker* is one:

- 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” is defined as at least once each week or on at least 4 days each month. “Contact” is physical contact, oral communication (whether in person or by telephone), or communication through any electronic medium, including by way of writing or visual images.

¹ Drafted by a working group convened by Universities New Zealand (chair, Prof Ian Reid), November 2015

The second bullet point above is important, and it provides a way for organisations to deal with equivocal situations, by requiring that a parent or guardian is present.

The Act differentiates between core and non-core children's workers, the former being the only children's worker present or the worker with primary responsibility for, or authority over, the child(ren) in providing a regulated service.

Regulated services as defined in the Act are listed in Appendix 2 of this guide. They include services provided at a public hospital, a publicly funded medical practice or through medical practices belonging to primary health organisations (PHOs); education services provided at a registered school, early childhood services, education services provided off-site on behalf of a school or early childhood service, services provided at a playgroup.

Specified organisations are State services or individuals/organisations funded in any way by a State service to provide regulated services. From 2017 this may extend to local authorities and organisations they fund.

If it is considered that the VCA will apply to a student at any stage during their programme of study', then it is recommended that this is made clear in all programme information and that students are notified of this during the enrolment process.

Safety Checking

The procedures for safety checks on *children's workers* are set out in the Vulnerable Children Regulations 2015 (see *Appendix 1: Resources*). The components of the process are:

- **Identity verification** requires the individual to be sighted together with a primary and a secondary identity document, details of which are given in Appendix 3. The primary identity document will usually be a passport² or birth certificate, and the secondary document a New Zealand driver licence or New Zealand student ID card. If neither of these contains a photo, then the applicant must provide a photo, authenticated by an identity referee (see regulation 5 in the Vulnerable Children Regulations 2015). If the person's name is different from that on their identity documents, they must provide supporting name change documents.

An alternative to this procedure is to use an approved electronic identity credential, such as [RealMe](#).

It must be confirmed that this identity has not been claimed by anyone else within the organisation.

- **New Zealand police vetting** must have been carried out within the last 3 years. The Criminal Records (Clean Slate) Act 2004 does not apply to specified offences of core children's workers. It is suggested that vetting is not done until the student has been provisionally accepted into a programme, to prevent multiple vetting of the same individual.

² The Act is silent as to whether the passport should be current

- **Reference check** At least one referee (nominated by and not related to the applicant) must be contacted and information sought to help determine whether the person poses a risk to the safety of children. This could be done electronically and could use questions such as:

In what capacity do you know the applicant?

How long have you known the applicant?

Do you have any concerns about the applicant's suitability to work with children?

Would you be happy for the applicant to take care of your children?

Are there any other comments you would like to make?

Are there any matters you would like to discuss by phone?

If the first referee raises concerns, then obtaining further references would seem appropriate.

- **Interview**, in person or otherwise, to inform the assessment of risk. Questions need to be appropriate for the work history of each applicant. For those in undergraduate courses, appropriate questions might be:

Is there any reason, including past events, you might be perceived to pose a risk to children?

Can you tell us about your experience working with children; throughout this experience have you encountered any particular challenges or difficulties; what were they and how did you respond to them?

Do you have any convictions that would preclude you from being engaged as a children's worker?

Are there any investigations or other matters that may be disclosed in the safety checking process?

- **Work history** over the previous 5 years should be documented. Memberships of or licensing/registration by relevant professional organisations must be recorded. If such membership/registration exists, this must be confirmed with at least one of the organisations named. Confirmation can be done through an electronic register.

A risk assessment of the applicant with respect to the safety of children must be undertaken, based on the material from the bullet points above. It is an offence to employ a core worker convicted of offences specified in Schedule 2 of the Act. Otherwise, the VCA does not require specific actions in response to information gathered. 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. Further discussion of this is provided on page 12 of the Children's Action Plan document (see Appendix 1). This decision is straight-forward when no issues are flagged by the above process. It is suggested that each academic programme defines a procedure for dealing with flags that are raised. This should include a small committee with an appropriate range of skills that allows the issues to be addressed in a way consistent with the principles of natural justice.

Communication between Universities and specified organisations: The bullet-pointed processes above and the risk assessment can be carried out by the *specified organisation* (usually a school or healthcare practice, in this context), or by a person or an organisation acting on their behalf. It is recommended that

universities undertake this risk assessment on behalf of all the “specified organisations” that a student will be placed with during their training, and enter into a formal agreement with those organisations to do so (e.g. by an exchange of letters). Such an arrangement avoids the need for “specified organisations” to verify that the process has been completed for each individual student, and it permits students to be checked once every 3 years yet have placements across a number of “specified organisations” during that time. Otherwise, each university and each *specified organisation* will need to agree on some other format for notifying each other that the requirements of the Act have been addressed.

Periodic safety checks

At intervals of not greater than 3 years the following must be checked:

- **Name changes** must be documented
- New Zealand **police vetting** must be repeated
- For those who are members of a **professional organisation**, or registered/licensed by a professional organisation or authority, reconfirmation of this with at least one of these bodies is required.

A **risk assessment** of the applicant with respect to the safety of children must be undertaken, based on the material from the bullet points above.

It is recommended that each academic programme put in place some form of automated reminder system to ensure that renewals are carried out in a timely manner.

Timelines

The requirements of the Act for safety checks come into effect as a staged process as follows:

- July 1, 2015: *new, core* children’s workers
- July 1, 2016: *new, non-core* children’s workers
- July 1, 2018: *existing, core* children’s workers
- July 1, 2019: *existing, non-core* children’s workers

Most undergraduate health students whose contact with children is sufficient to qualify them as children’s workers would be expected to be non-core. Risk assessments only need to be in place when they are functioning as *children’s workers* providing a *regulated service* in a *specified organisation*, which may be for only part of their programme of study. Therefore, the optimal timing of risk assessment needs to be determined for each course, but should be completed well in advance of any practicum placement so that the placement is not placed in jeopardy by delays in any part of the process. Existing students of a university should be regarded as new children’s workers when they move to a new *specified organisation* (e.g. from one school to another). Therefore, the 2016 date will apply to most. Safety checking of *existing* children’s workers is required from either 2018 or 2019, but because students usually move around specified organisations, these dates will not usually apply to students.

University Staff Requiring Safety Checks

Some university staff will provide government-funded, regulated services as part of their university appointment. Examples include staff who also work within healthcare

environments or, possibly, schools, and those who perform any of the activities listed in Schedule 1 of the Act. This includes mentoring and counselling services, medical or other health services, and early childhood services (e.g. university crèches). The nature of their work will determine whether the staff member is a core or non-core worker.

Safety checking of these staff members should follow the principles outlined above for students. The interview questions may need to be more detailed than those suggested above for students, and tailored towards the areas in which the staff member works. Possible questions are provided in the Children's Action Plan document referenced in Appendix 1.

Timelines

The timelines for these checks are outlined in the preceding section. Because these staff are not usually moving from one institution to another, as is the case for students, current staff will be “existing staff” in terms of the Act, so will need to be checked from July 1 2018, if they are core workers, or from July 1 2019 if they are non-core. New appointments into these roles need to be safety checked from July 1 2015/16, as appropriate.

Special Situations

Children Visiting a University Facility

From time to time, people under the age of 18 will come into universities for a variety of purposes. Those hosting these children are only classified as *children's workers* under the VCA if:

- the contact 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; **and**
- the hosts are providing a *regulated service* as listed in Appendix 2.

Thus, incidental daytime visits would not qualify, but overnight or regular visits might. Education services are only a *regulated service* when provided on behalf of a registered school. Any education services not provided on behalf of a registered school do not appear to be covered by the Act. Thus, camps or hosting children overnight in university hostels appear to lie outside the Act, if this is organised independently of a school.

Research

It is our view that research carried out within universities is not covered by the Act, since research is not a regulated service. The situation may be less clear-cut in relation to research carried out within a healthcare environment or a school, or together with some other regulated service. Here, even though the research is not a regulated service, regulated services (such as healthcare and the provision of education) may be integral to the research project. Research in schools or healthcare environments that does not involve delivery of either education or healthcare does not appear to be covered by the Act. Circumspection is needed in this context, and if there is significant uncertainty as to whether the Act applies, then the procedures for assessing risk in employees in that institution should be followed.

Each institution should establish a procedure to ensure that their research complies with the Act.

International Students or Staff

The legislative requirement is to provide a NZ police vet, though it would seem desirable to provide an overseas police check as well, but this is not required by the Act.

Appendix 1: Resources

[Vulnerable Children Act 2014](#)

[Vulnerable Children \(Requirements for Safety Checks of Children's Workers\) Regulations 2015](#)

[Vulnerable Children Act 2014 requirements for worker safety checking - DHB interim information, Ministry of Health](#)

[Children's worker safety checking under the Vulnerable Children Act 2014, Children's Action Plan](#)

Appendix 2

Schedule 1 from the Vulnerable Children Act 2014

Schedule 1

Regulated services

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The following are regulated services for the purposes of Part 3:

Welfare, support, and justice services

- (1) services provided (including the performance or exercise of functions and powers) under the Children, Young Persons, and Their Families Act 1989 by the department responsible for the administration of that Act, or by any care and protection co-ordinator or youth justice co-ordinator:
- (2) services provided at, or in relation to the operation of, any residence within the meaning of section 2(1) or 364 of the Children, Young Persons, and Their Families Act 1989 (excluding, for the avoidance of doubt, services provided by an individual with whom a child is placed under section 362 of that Act):
- (3) services provided by any person, organisation, or body approved under section 396 or 403 of the Children, Young Persons, and Their Families Act 1989:
- (4) services provided (including the performance or exercise of functions and powers) under any order, direction, or recommendation of a court made under the Children, Young Persons, and Their Families Act 1989, the Care of Children Act 2004, or the Adoption Act 1955 by—
 - (i) the department responsible for the administration of the Children, Young Persons, and Their Families Act 1989; or
 - (ii) any other person, organisation, or body:
- (5) services provided by any person, body, or organisation pursuant to any decision, recommendation, or plan made by a family group conference under the Children, Young Persons, and Their Families Act 1989:
- (6) services provided at prisons, secured facilities, and children's health camps:
- (7) services provided as part of a condition of bail made under the Bail Act 2000:
- (8) services and facilities of the kind referred to in sections 4(a) and 7(2)(b)(i) of the Children, Young Persons, and Their Families Act 1989:
- (9) social or support services, including (but not limited to) victim support services, drug and alcohol rehabilitation services, and childcare services:
- (10) mentoring and counselling services:
- (11) youth services and youth work:
- (12) participating in a telephone communication service that is likely to be used wholly or mainly by children:
- (13) moderating an electronic interactive communication service that is likely to be used wholly or mainly by children (but a person does not moderate a public electronic interactive communication service unless he or she has access to the content of the matter or contact with users of the service):

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- (14) services provided to escort, track, or transport children for the purposes of the Children, Young Persons, and Their Families Act 1989:
- (15) out-of-school care and recreational services:
Health services
- (16) services provided at a public hospital:
- (17) services provided at a publicly funded medical practice or facility, including blood and cancer centres, treatment centres, outreach clinics, and mental health services:
- (18) services provided through medical practices belonging to primary health organisations (PHOs):
- (19) services provided by health practitioners:
- (20) Well Child Tamariki Ora (WCTO) services (eg, Plunket):
- (21) home-based disability support services:
- (22) residential disability support services:
- (23) ambulance services:
- (24) maternity services, including lead maternity carers and midwives:
Education services
- (25) education services provided at a registered school (as defined in section 2(1) of the Education Act 1989):
- (26) early childhood services (as defined in section 309 of the Education Act 1989):
- (27) education services provided by a trades academy, a service academy, or an alternative education provider for or on behalf of a school:
- (28) education services provided at any off-site location for or on behalf of a registered school or early childhood service, including teen parent units, school camps, and learning centres:
- (29) services provided to ensure enrolment and attendance at school in accordance with sections 20 and 25 of the Education Act 1989:
- (30) services provided at a playgroup (as defined in section 309 of the Education Act 1989):
- (31) services provided at any location on behalf of a limited child care centre (as defined in section 2(1) of the Health and Safety in Employment Act 1992):
Transport services
- (32) work driving a vehicle that is being used only for the purpose of conveying children and any persons supervising or caring for the children (for instance, school bus services):
Policing services
- (33) specialist child and family policing services provided by Police employees (as defined in section 4 of the Policing Act 2008).

Appendix 3

Schedule from Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015

- (i) a core worker; or
 - (ii) a non-core worker.
- (2) In carrying out an assessment under subclause (1), the specified organisation must take into account—
- (a) any information gathered under regulations 10 to 12; and
 - (b) any guidelines on risk assessments issued by a key agency.
- (3) The assessment must be carried out,—
- (a) if the specified organisation is an individual,—
 - (i) by the individual; or
 - (ii) by a person or an organisation acting on behalf of the individual; or
 - (iii) in part by the individual and in part by a person or an organisation acting on behalf of the individual; or
 - (b) if the specified organisation is not an individual,—
 - (i) by an officer or an employee or the governing body of the specified organisation; or
 - (ii) by a person or an organisation acting on behalf of the specified organisation; or
 - (iii) in part by an officer or an employee or the governing body of the specified organisation and in part by a person or an organisation acting on behalf of the specified organisation.

Schedule

Confirmation of identity

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Part 1

Primary identity documents

Document type	Issuing agency
New Zealand passport	Department of Internal Affairs
Overseas passport (may include New Zealand immigration visa or permit issued by Ministry of Business, Innovation, and 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 the Immigration Act 1987 to people who have refugee status)	Ministry of Business, Innovation, and Employment (Immigration New Zealand)
New Zealand firearms licence	New Zealand Police
New Zealand full birth certificate that is issued on or after 1 January 1998 and that carries a unique identification number	Department of Internal Affairs
New Zealand citizenship certificate	Department of Internal Affairs

Part 2

Secondary identity documents

Document type	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 6 months earlier	
Steps to Freedom form	Department of Corrections

Part 3

Supporting name change documents

Document type	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

Michael Webster,
Clerk of the Executive Council.