NZMA
New Zealand Medical Association

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Regulations for Worker Safety Checks – Vulnerable Children Act 2014

Dear Yvonne

Thank you for inviting the New Zealand Medical Association (NZMA) to provide feedback on draft regulations for worker safety checking requirements under the Vulnerable Children Act, and the accompanying draft guidelines for interpreting the safety check regulation requirements.

1. The NZMA is the country's largest voluntary pan-professional medical organisation with approximately 5,000 members. Our members come from all disciplines within the medical profession and include general practitioners, doctors-in-training, specialists, and medical students. The NZMA aims to provide leadership of the medical profession, and promote professional unity and values, and the health of New Zealanders.

2. Our feedback is focussed on the draft regulations. Due to the extremely short timeframe (less than 3.5 days from receipt of the consultation to deadline for comment), we have not had time to look at the accompanying guidelines in detail. We appreciate the extension to provide comment on these guidelines and will endeavour to do so by 20 May.

3. The NZMA is fully supportive of the intent behind the regulations for worker safety checking under the Vulnerable Children Act 2014. However, we wish to draw your attention to selected points in the draft regulations that we believe require further clarification, consider to be unduly onerous, and/or believe will be unworkable. Where possible, we provide explanations of

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identified problems and recommend solutions. However, we are not in a position to provide replacement text for the draft regulations.

4. In our dialogue on this initiative with the various Ministries, we understood that safety checking could be undertaken by a third party. We felt, at the time, that this may help mitigate some of the challenges that safety checking would pose for smaller practices and those employers that rely on the services of short-term contractors. While the draft regulations define 'specified organisation' as including a person acting on behalf of the employer, we seek confirmation as to whether the regulations allow third party safety checking. We note that the risk assessment component of the checking process can be undertaken by a 'screening service' on behalf of the employer. However, our understanding was that the entire safety checking process could be undertaken by a third party. If this is not the case, the administrative burden of the safety checking process is likely to represent a significant barrier to the successful adoption of these regulations by many medical practices.

5. It was also our understanding that the police vetting component of the safety check would be portable (ie, if there was confirmation that the police vet had been carried out elsewhere within the last 3 years then it would not need to be redone). The draft regulations, however, seem to limit this portability to a police check done earlier by the employing organisation or a professional body or regulatory authority. The regulatory authority for doctors does not undertake police vetting, and professional bodies (eg, the NZMA) do not have the capacity to do so. In practice, therefore, this requirement would mean that a locum doctor would need to be re-vetted for every engagement at a different employer. This is simply not workable for a number of reasons. These include the often extremely short period between the offer of a contract and the start date of employment, locum deployment across different geographic and employment settings, short periods of employment, and the sizeable proportion of the locum workforce. According to the 2014 workforce survey by the Royal New Zealand College of General Practitioners, 9% of general practitioners are on short-term contracts.

6. The requirement in the draft regulations for employers to contact every professional body the applicant belongs to is something that was not signalled in advance and we are surprised at its inclusion. In the case of the medical workforce, this requirement is unduly onerous and impractical. Doctors may belong to many professional bodies (eg, their College, their Society and the NZMA). Or they may belong to none. The NZMA is certainly not in a position to field requests for the disclosure of information that is, or may be, relevant to a doctor's risk assessment. Not only do we lack the capacity, we do not hold that type of information. This requirement appears to be superfluous and unworkable. We suggest that it be removed from the draft regulations.

7. The requirement to contact a referee that has known the applicant for 5 years to obtain information for the risk assessment may prove problematic given the high proportion (>40%) of international medical graduates (IMGs) in the medical workforce. Many IMGs have been in New Zealand for only a short period of time. The requirement to contact overseas referees and request sensitive information, particularly from countries where IMGs may have left under difficult circumstances (eg, as asylum seekers) could entail considerable difficulties. To mitigate these difficulties, we suggest that you consider reducing the length of time a referee must have known an applicant.

8. While we recognise that identity confirmation is an important component of this process, we question the narrow definition of primary identity documents in the draft regulations. We believe that it is unreasonable to expect everyone to have a passport or to have to pay for an updated birth certificate in order to meet the definitions around primary identity documents. We

note that photographic identification such as a New Zealand driver license is accepted as a primary form of identification for most other purposes. Furthermore, the list of identity documents necessary to obtain a New Zealand drivers licence is the same as those defined as primary identify documents in the draft regulations for safety checking. Accordingly, we suggest that the list of primary identity documents in the draft regulations be broadened to include a New Zealand driver license.

9. While we understand the desire to have the highest practical form of safety checking for all new employees who are unknown to their employers and colleagues, we remain less convinced with the requirement for all existing employees to undergo the same level of scrutiny as new employees. We also question the practicality of this requirement. By way of example, as the draft regulations stand, a practice nurse that has been employed at the same practice for 30 years would need to provide their work history, a referee (that must be contacted for risk assessment purposes), name of all professional organisations which they are a member, and be interviewed for risk assessment. Furthermore, we note that the requirements for periodic safety checks appear identical to the requirements for the first time risk assessment. In our view, periodic checking should entail a lesser level of inquiry than the first time check. We question the need for a police vet every three years for persons that are continually employed by the same employer. We believe that this requirement is unnecessary and suggest that it be removed from the draft regulations.

10. A cursory look at the accompanying guidelines indicates there are likely to be significant problems that will compound the issues we have already identified. By way of example, we note that only approved agencies, not individuals, can use the police vetting service. To become approved, agencies must meet the required criteria. This will add yet another step for many medical practices to meet before 1 July 2015. We also note that the processing period for police vetting may be up to 20 working days. This is unworkable given the dynamics around the employment of locum doctors. If employers were required to wait up to 20 days before engaging the services of a locum, service needs would not be met and the health of patients, including children, would undoubtedly suffer. The 20 day delay for police vetting is another argument for portability. If a locum has been police vetted for a prior contract, then that should suffice. We hope to provide you with more detailed feedback on the accompanying guidelines by 20 May.

11. To conclude, while we are strongly supportive of the intent to confer the best protection to children, we take the view that the regulations are overly heavy handed and appear to reflect a one-size-fits all mentality. The healthcare workforce is very different to the teaching workforce, yet the draft regulations fail to take into account these differences. Aspects of the draft regulations as they stand are simply unworkable for the health sector. Issues around feasibility are not limited to small medical practices. For example, approximately 330 second year house officers rotate through employment in paediatric wards around the country every 3 months. Many of these doctors have no professional association and no work history for the preceding 5 years. The requirement to conduct interviews for this large and continually rotating cohort of doctors is likely to be challenging, even for larger employers. It is our view that the draft regulations prescribe a safety checking process that is at odds with official advice we received in response to a request for information from the CAP directorate. We note that in formal advice, the safety checks were designed as a “minimum requirement” and will “scale naturally to the risk of the role”. This advice does not appear to be reflected in the draft regulations.

12. Unless there are amendments to the draft regulations to address the concerns we have outlined above, we have serious doubts as to whether these regulations will be able to be successfully implemented in a robust manner. Given that employers could face prosecution for failure to comply with the regulations, we consider it a matter of high priority that the concerns we have highlighted are satisfactorily addressed before the regulations are due to come into effect.

We would be happy to meet with you to further elaborate on these issues and help contribute towards identifying possible solutions.

Yours sincerely

Dr Mark Peterson
NZMA Chair