

12 November 2014

Ben O'Meara
Group Manager
Schooling Policy
Ministry of Education

AA 1/12

By email: Ben.O'Meara
cc: Jackie.Talbot

Dear Ben

Children's Action Plan: policy proposals for the safety checking regulations

1. Thank you for the opportunity to comment as part of the targeted consultation on the policy proposals for safety checking regulations to be made under the Vulnerable Children Act 2014 ("**the Act**").

Support for the CTU submission

2. PPTA is an affiliate member of the New Zealand Council of Trade Unions ("**CTU**") and we support the points made about the proposals by the CTU General Counsel, Jeff Sissons, in his letter to you (dated 12 November 2014). In particular, we note:
 - The concerns about the proposal to recover charges for Police vetting and the need to ensure that this additional cost is not passed on directly to the children's workforce;
 - Natural justice concerns when considering information received through the course of reference checking; and
 - Concerns raised about interview questions as a reliable predictor of an increased predilection to child abuse.
3. PPTA comments on the specific proposals are outlined below.

Safety check: Identification verification

Proposal

A "children's worker" be subject to the "moderate evidence of identity standard" developed by the Department of Internal Affairs. This involves the following (at a minimum):

- *School needs to sight a Category A identity document (birth certificate, passport, citizenship certificate, NZ certificate of identification or NZ firearms licence);*

- School needs to sight a Category B identity document (documentation that comes from a “trustworthy source”, and to include the name of the person applying and a date)

[Note that one of the Category A or B forms of identification must include a photograph of the person applying]

- Schools should search their employment records to ensure that the identity claimed is unique.
- If, for any reason, the school has taken all reasonable steps but is unable to complete any of the above steps (for example, for a teacher that was a refugee without the prescribed identity documentation), then a teacher would need to provide an identity statutory declaration for the identity referee (modelled off the one used for the NZ passport).
- Where a teacher’s name has changed and this is not reflected on the identification provided, the teacher must provide and the school must sight evidence establishing the name change.
- Provision is made for an equivalent or better form of electronic verification (such as a verified RealMe account).

PPTA Comment

4. These appear to be sensible requirements to help ensure the correct identification of a person who is applying for, or already working in, a children’s worker role (such as teachers). There are a few people who will try to hide their identification because of previous convictions and may be a risk to working with children.
5. Many schools will already have this as a requirement and the introduction of the regulations will simply standardise the practice across schools. It is useful that the Ministry has foreseen that there may be cases where teachers may not have access to either the Category A or Category B forms of identification (such as refugees) and that provision is intended to be made for a third type of identity assurance to be given based on an existing statutory practice. This also helps to ensure that there is no inadvertent discrimination under either the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993 on the grounds of national identity.
6. We note that NZSTA is currently in the process of applying to use RealMe and that this may be more widely available to schools in the future.

Safety check: Police vetting

Proposal

The requirement in the regulations is largely business as usual for teachers, and simply extends the requirement for a three yearly Police vet to other professions that do not currently have one (such as GPs).

It is, however, important to note generally that the Police vet provided:

- *Requires the consent of the teacher before it is accessed by the school;*
- *Is not limited to convictions and includes, for example, information that is about charges and warrants for arrest, or other relevant information that a Police officer decides, in his or her discretion, should be provided.*

The Policing (Cost Recovery) Amendment Bill proposes to charge the user or beneficiary for the "actual and reasonable" cost of performing a Police vet, as one of "demand services" to be prescribed if the Bill is passed. This Bill is on the Order paper and awaiting formal introduction.

PPTA Comment

7. The Regulations are simply an extension of the new requirement for police vetting of the children's workforce that has been introduced in the Act and, as noted above, is largely a continuation of existing practice for teachers notwithstanding the different types of information that Police may, at their discretion, make available through the provided vet.
8. It will be important for anyone subject to this requirement to know the breadth of the information that may become available, their right to access such material under the Privacy Act 1993 and that historic offences that were previously not required to be disclosed under the Criminal Records (Clean Slate) Act 2004 may now be disclosed by Police where they consider the material is relevant to that person's suitability and risk to working with children.
9. The general rule is that a Police vet will be required whenever a children's worker (such as a teacher) starts a new job or otherwise every three years. However, we note that this will not be required where a professional body (such as the New Zealand Teacher's Council) has already performed the three-yearly vet for a registered professional (such as a registered teacher). We support this proposal. Requiring a teacher to re-apply for a vet every time they start a new job would be unduly cumbersome and (given the proposal to charge for a Police vet) expensive— particularly if this cost was transferred to an insecure workforce, such as long-term and day reliever teachers.
10. We are concerned about the costs that the constant Police vet will impose on other, less structured parts of the children's workforce which do not have a professional regulatory body like the Teacher's Council. We recommend that the Ministry works out another centralised system, which would avoid an organisation or children's worker from having to constantly re-apply within a three year period.
11. As noted above, we strongly oppose any proposal to impose additional costs on the children's workforce and note that this sits alongside other proposals in the Education Amendment Bill (No.2), which will increase the cost of teacher registration. It is unclear why the Government is pursuing a policy of imposing additional costs on people who want to become teachers.

Safety check: reference checking

Proposal

This proposal relates to a new requirement for employers to check the references and obtain good character evidence of children's workers, such as teachers. There will be a requirement for schools to:

- *Do a reference check (there will not be a prescribed number or types of checks but this requirement will be supported by good practice guidance);*
- *Seek a work history from the teacher; and*

- *Seek evidence of good character from the Teachers Council – there is a suggestion that this could be covered off by confirming the status of a practising certification and that there are no outstanding disciplinary concerns.*

PPTA Comment

12. Most of these changes are sensible and simply confirming current practice for the majority of schools. However, there is a question about what will end up being incorporated into the guidance regarding reference checks.

13. In a recent meeting of the Workforce Advisory Group, there was a suggestion from one member that employers should be given a blank cheque to speak to whoever they wanted about an applicant without obtaining that applicant's consent and obviously going beyond the scope of who the applicant may have put down as referees on their CV. While child protection is important, there seemed to be a disconnect in this proposal relating to other reasons and interests, such as being employed in a current role and not wanting to jeopardise that employment and a break-down in working relationships, privacy interests and personality clashes that had nothing to do with someone's suitability to work with children.

14. We note that one compromise position that was reached between the CTU and the Ministry of Education on the voluntary vetting and screening guidelines was a suggestion that an applicant may grant a general consent for any person to be contacted about their suitability for working with children but that any information provided in this forum must also be passed on to the applicant who must also be given an opportunity to respond. While the principle is sound, we are concerned about the enforceability of such a provision.

15. The other point in respect of teachers is the requirement that there be "no outstanding disciplinary concerns with the Teachers Council". We note that there may be time delays with the deliberation and decision-making of this body and the Tribunal and that "disciplinary matters" may relate to other actions that have nothing to do with child safety and protection. Adopting a blanket ban where there are outstanding disciplinary concerns would unduly prejudice a teacher's ability to seek further or continue employment and is inconsistent with the principles of natural justice. We would oppose such a position and recommend that it instead be clearly linked to whether the person holds a practising certificate.

Safety check: Interviews

Proposal

Schools will need to question all teachers directly to ascertain their suitability to work with children. The number, form and type of questions would not be prescribed but guidance material on this subject will be produced, which will also include specific types of questioning methods and the need to ask questions that test values, attitudes and beliefs in respect of child safety.

PPTA Comment

16. The Ministry informed the WAG that not all schools or employers in the children's workforce are currently conducting interviews well or, sometimes, at all when recruiting new staff. It is useful that the Ministry are looking at guidance material rather than prescribing particular questions, which would otherwise be fairly rigid and do not lend themselves to the intended culture change in the children's workforce that the Government intends to make.
17. There is a risk that the guidelines will become the default position, which may not be appropriate to a particular context, so it will be important to stress the voluntary nature of these guidelines at the beginning of that document when it is drafted.
18. Interviews are also the appropriate time for employers to ask about previous employment and whether there were any concerns that arose in that context that may make the applicant unsuitable for working with children. It will be down to the professional judgment of the employer to perform a risk assessment and make a decision based on the information that they are given and to follow up on any concerns that they may have. We note the concerns that the CTU have raised about interviews in their submission letter.
19. PPTA would like to be consulted on any draft guidelines prior to them being published.

Safety check: risk assessment

Proposal

No further risk assessment requirements are proposed in the regulations. The Act already requires employers to undertake a risk assessment that assesses the risk that the person would pose to the safety of children if employed as a children's worker.

PPTA Comment

20. We support relying solely on the requirement in the Act and not imposing further risk assessment requirements through regulations. As above, this is a matter of professional judgement for the employer, taking into account all relevant information received.

Safety check: categorising workers

Proposal

The Act has certain requirements that apply to "core" or "non-core" children's workers. There is a proposal for employers to categorise their entire workforce into either core or non-core children's workers – for inclusion in the regulations. It is intended that this will help employers to have a better understanding of their obligations and for making decisions about the risk assessment of workers and who the workforce restrictions apply to.

PPTA Comment

21. This appears to be a useful exercise that will naturally fit into the introduction section of a school's child protection policy (also required under the Act) and will help schools to better understand their obligations and the different levels of risk that may apply to different parts of the children's workforce.

Safety check: verifying dubious qualifications

Proposal

This proposal would require a person carrying out a safety check to verify a qualification or certificate where they have doubts about its authenticity or validity.

PPTA Comment

22. It will be important for schools to make this requirement clear to any person that is delegated the responsibility of doing a safety check.
23. There is also a risk that some tertiary education providers may no longer be in operation and / or may not have maintained accurate records, particularly for those people who trained overseas. There may be legitimate reasons why the information cannot be verified and further guidance is required rather than treating this as an absolute. It may be sensible to have an alternative option where this is not possible to check (as with the proposal for identity verification).

Proposal

This would simply be a clarification statement in the regulations, which noted that all of the standard safety checking requirements in the Regulations are subject to existing legal obligations, including those in the Employment Relations Act 2000, the Privacy Act 1993 and the Human Rights Act 1993.

PPTA Comment

24. This is a useful statement of principle and a reminder to anyone conducting standard safety checks that there are other obligations that need to be considered as part of any recruitment or review process. It would also be useful to add the good employer obligations, such as those under the State Sector Act 1988, and the NZ Bill of Rights Act 1990 to this list, and the relevant health and safety legislation to help avoid employers falling into the workplace bullying risk zone.

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?

PPTA Comment

25. As noted in the PPTA submission on the Vulnerable Children Bill, identifying child abuse is a difficult exercise that often requires expert assessment. Although the

Guidelines are intended to be non-legislative guidance material reflecting best practice, we are concerned that they may be treated as the de facto minimum standards and there is a risk that schools and school leaders will be publicly criticised for making judgement calls that turn out to be incorrect.

26. The nature of the decisions made under the Guidelines is subjective and it is unclear how much funding the Government is prepared to commit for on-going training of the public sector workforce that will be required to make these decisions. This is likely to lead to perverse behaviour. Some schools may put the Guidelines in the too hard basket, spend large chunks of their operational budget on legal advice, or be overly vigilant. All of these things can undermine professionalism and collegiality.

27. Culture change that protects children while ensuring a safe working environment will require a commensurate investment by Government.

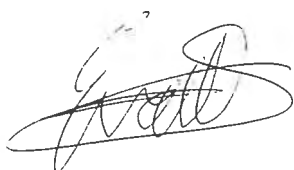
Are the components of the standard safety check practical? Will there be any circumstances where they cannot be completed in a timely manner?

28. As noted above, the checking of qualifications / certification may prove difficult for applicants that trained overseas, and in some cases impossible. Provision needs to be made for this.

What additional considerations or safeguards need to be included in a high quality check?

29. No further comment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Eva Hartshorn-Sanders', written in a cursive style.

Eva Hartshorn-Sanders
PPTA Advisory Officer
Barrister and Solicitor