

Legal update - Vulnerable Children Act: 1 July reminder

[Hamish Kynaston](#), [Peter Chemis](#), [Sherridan Cook](#), [Susan Rowe](#), [Catherine Miller](#), [Mere King](#)

2 June 2016

The [Vulnerable Children Act 2014](#) has introduced a number of measures intended to reduce the risk of harm to children. As of **1 July 2016** the workforce restriction will apply to existing 'core workers'. The workforce restriction makes it an offence for people with certain criminal convictions to continue working as core workers unless they hold an exemption. All core workers and all organisations that are subject to the Vulnerable Children Act will therefore need to consider what steps they need to take **before** 1 July 2016 to ensure they do not fall foul of the new restriction.

The [Vulnerable Children Act 2014](#) introduced a number of measures intended to reduce the risk of harm to children, including:

- Requirements for all State services (and all organisations funded by a State service, including those that only receive partial or indirect funding) that provide '[regulated services](#)' to '[safety check](#)' their new and existing '[children's workers](#)'
- A workforce restriction, which prohibits such organisations from employing or engaging, *or continuing to employ or engage*, a person as a '[core worker](#)' if the person has been convicted of a '[specified offence](#)', unless that person has an exemption under the Act.

The requirements to safety check new and existing children's workers are being phased in over time. Since 1 July 2015, organisations have been required to safety check all new core workers before their employment or engagement commences, and all existing core workers will have to be safety checked before 1 July 2018.

Workforce restriction

Importantly, the workforce restriction for existing core workers will apply from **1 July 2016**. Therefore, from that date, organisations that have not completed their safety checks of existing core workers are at risk of contravening the Act. While an organisation will not be liable unless they know or are reckless as to whether a core worker has been convicted of a specified offence (refer section 28(9)), we recommend that organisations take immediate steps to:

- Identify who within their organisation falls within the definition of a core worker
- Remind all core workers that if they have a conviction for a specified offence, they must apply for and obtain an exemption before 1 July 2016 to be able to continue in their role.

Organisations may also consider:

- Advising the core workers who they employ or engage of their good faith disclosure obligations if they have been convicted of a relevant offence (for more information see our [legal update - Good faith: a focus on employees](#))
- Arranging a police vet for all core workers that have not yet been the subject of a safety check under the Act.

Exemption process

The exemption process is set out in sections 35 to 38 of the Act, and is administered by the Ministry of Social Development. Further information regarding the process, including an application form, is available [here](#).

After 1 July 2016

After 1 July 2016, if an organisation believes that a core worker has been convicted of a specified offence and has not obtained an exemption, section 28 of the Act has a structured suspension and termination process that the organisation must follow. The organisation must immediately:

- Suspend the worker from all duties that require or enable him or her to act as a core worker
- Specify the period of suspension, which must be at least 5 working days and may be extended from time to time
- Tell the worker of the reason for the suspension and the grounds for the organisation's belief

- Advise the worker that he or she is entitled to provide a response.

At the end of the period of suspension, the organisation must terminate the worker's employment or engagement as a *core worker* if the organisation believes on reasonable grounds that the core worker has a conviction for a specified offence and does not hold an exemption under the Act.

Key terms

The meaning of '**core worker**' is set out in [section 23 of the Act](#). Essentially, a core worker is a children's worker who, in the course of their work, will be alone with children or will at times have primary responsibility for, or authority over, children.

A '**children's worker**' is defined in [section 23 of the Act](#). Essentially, a children's worker is a person whose work involves regular or overnight contact with children without parents or guardians being present.

The **safety check** requirements are set out in the [Vulnerable Children \(Requirements for Safety Checks of Children's Workers\) Regulations 2015](#). For more information, see our [legal alert on safety checks of children's workers](#).

The list of **specified offences** is set out in [Schedule 2 of the Act](#) and includes offences such as wounding with intent, and assault on a child. Importantly, as the Criminal Records (Clean Slate) Act 2004 does not apply to core workers who have been convicted of a specified offence, organisations will not be able to rely on police vet's undertaken prior to the enactment of the Vulnerable Children Act (noting also that a person may have been convicted of a specified offence in the intervening period).

The list of **regulated services** is set out in [Schedule 1 of the Act](#) and is very broad, encompassing welfare, support, justice, health, education, transport and policing services.

For further information, please contact a member of our employment team below.

Auckland

188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659