

# Regulatory Impact Statement

## Safeguarding the children's workforce through standard safety checks

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Education, on behalf of a cross-agency project group.

In September 2012 Cabinet agreed in principle to introduce a requirement for safety checks for people in the children's workforce, including volunteers who have control of, or work alone with, children [CAB Min (12) 34/9 refers].

Recent cases have shown that unsafe individuals can gain access to children through roles in the children's workforce. However, there is a lack of evidence of how often this occurs in New Zealand, due to the limits of current recording systems.

This Regulatory Impact Statement provides an analysis of the key components of the proposed standard safety checks legislation, and compares this with alternative options.

It also provides an analysis of the proposal to restrict individuals with particular convictions from being employed in the core children's workforce, and compares it with alternative options.

The analysis is based on best available evidence, noting that empirical evidence is limited. The recommended approach aligns with both the Government's wider responsibilities regarding the protection of vulnerable children, and an assessment of the risk. It sits alongside a suite of independent policy and legislative reforms.

We have not included any analysis of the proposal to recover the costs of New Zealand Police vetting and Ministry of Justice criminal records checks, as this is still under consideration and decisions are yet to be taken, although it is noted that any changes in this area are likely to have an impact on where costs lie.

The New Zealand Police, Ministry of Social Development, Child, Youth and Family, Ministry of Education, Ministry of Health, Ministry of Justice and Te Puni Kōkiri have contributed to the development of the proposal.



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## Background

1. On 24 September 2012, Cabinet agreed in principle to introduce a requirement for safety checks for people in the children's workforce, including volunteers who have control of or work alone with children [CAB Min (12) 34/9 refers].
2. The White Paper for Vulnerable Children (the White Paper), released in October 2012, noted that the requirement for standard safety checks will:
  - be set out in law and given effect through registration, employment and contracting relationships, and guidelines
  - be phased in over time, focusing on core roles first
  - include certain volunteers who have control of, or work alone with, children.
3. The Children's Action Plan committed to introducing legislation for the vetting and screening of the children's workforce by the end of 2013.

## Status quo and problem definition

4. Based on the definition within the White Paper for Vulnerable Children, the children's workforce is made up of a diverse range of individuals in a range of sectors and organisational types. Significant proportions of the children's workforce are employees of central government, or organisations the contract, including approximately 260,000 - 280,000 people in the education, health, welfare and justice sectors<sup>1</sup>. Of this number, it is estimated that there are approximately 170,000 – 180,000 people in the core workforce<sup>2</sup> and 90,000 – 100,000 people in the wider workforce<sup>3</sup>. See Annex A for detailed estimates.
5. Volunteer organisations<sup>4</sup> engage the workforce in community activities (e.g. children's sports teams, Scouts New Zealand) and religious services (e.g. Sunday schools). There are more than 97,000 non-profit organisations in New Zealand; containing an estimated 1.2 million volunteers and over 105,000 paid employees.<sup>5</sup> Some volunteers will be working within state sector organisations such as schools and hospitals. It is not known what proportion of these roles involve direct child contact, or take place in a child-related setting. It is assumed that a high proportion of these volunteer roles will be wider workforce roles.
6. Local Government also employs a children's workforce through services provided to local rate payers (e.g. Swim Schools at pools, reading groups at libraries). Privately funded business employs the children's workforce in 'fee-for-service' recreation or instruction services (e.g. Big Air Gym, Numberworks). This also includes individuals who are self-employed (e.g. private math/language tutors, music teachers, children's entertainers).

<sup>1</sup> This includes state services, Crown Entities (e.g. District Health Boards, Boards of Trustees), registration bodies (e.g. New Zealand Teachers Council, Medical Council of New Zealand), licensed services (e.g. Early Childhood Education), and contracted services (e.g. School Holiday Programmes).

<sup>2</sup> The concept of the CORE workforce is based on people who have control of, or work alone with, children.

<sup>3</sup> The concept of the WIDER workforce is based on people with some child contact in their role.

<sup>4</sup> Some are partially funded by government grants (e.g. from Sport New Zealand).

<sup>5</sup> <http://www.ocvs.govt.nz/work-programme/building-knowledge/subsector-facts.html>

Figures on the number of people involved in these sectors are not available; however these sectors are much smaller than the central government and voluntary sectors.

7. While there is limited New Zealand data available, overseas evidence shows that children are abused by the people who work with them. A 2009 review carried out in the United Kingdom into the effectiveness of guidance on the handling of allegations of abuse by those working with children found the total number of allegations referred to the Local Authority, based on 85 per cent of authorities, was 4069 in the period 1 April 2007 – 30 September 2007. The greatest proportion of the referrals came from the education sector, followed by social care, and then health. A proportion of these allegations were found to be malicious (2.8%) or unfounded (13.4%).<sup>6</sup>
8. Recent cases have also shown that there are deficiencies in standards in the children's workforce in New Zealand, which have allowed unsuitable people access to children. For example, in the education sector, the *Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector* identified a number of areas where current policies and procedures could be strengthened (e.g. identity verification and hiring practices).<sup>7</sup>
9. Therefore, although there is limited evidence about the extent of child abuse by the New Zealand children's workforce, the potential for abuse is a concern, and it is important that the people in the core and wider workforce for children do not pose unacceptable risks to children.
10. The majority of organisations, particularly Government funded services, already have some form of safety checking in place to ensure that unsuitable individuals do not work with children. Components of the various existing vetting and screening processes in the education, health, justice and welfare sectors, and in specific roles in some of these sectors, are described below.

**Table: Current vetting and screening processes**

Identity checks	<ul style="list-style-type: none"> <li>• Majority of agencies and Regulatory Authorities (RAs) sight identification documentation</li> <li>• Majority of agencies do not specifically check for aliases (undeclared)</li> </ul>
References	<ul style="list-style-type: none"> <li>• Majority of agencies check two to three references and ideally include one from the previous line manager or employer</li> <li>• Majority of RAs check professional and character references from overseas applicants and require a Good Standing Certificate from applicants that have worked in a country that issues one</li> </ul>
Police checks	<ul style="list-style-type: none"> <li>• Majority of agencies:               <ol style="list-style-type: none"> <li>(i) use Police check with the s19 exceptions<sup>8</sup> for permanent and temporary employees (including for some internal appointments) that meet section 19 Criminal Records (Clean Slate) Act 2004 and standard s7 Police check for other roles</li> <li>(ii) check any declared aliases</li> <li>(iii) do not check contractors or service providers or alternatively rely on background checks done by the contracted provider or relevant professional association/body.</li> </ol> </li> </ul>

<sup>6</sup> Review of implementation of guidance on allegations of abuse against those who work with children or young people. Department of Children, Schools and Families, United Kingdom, 2009.

<sup>7</sup> <http://www.minedu.govt.nz/theMinistry/EmergencyManagement/MinisterialInquiryPersonA.aspx>

<sup>8</sup> The s19 exceptions includes 'clean slate' information, which is withheld in a standard (s7) Police check.

	<ul style="list-style-type: none"> <li>• Some agencies require ongoing police checks, e.g. every three years</li> <li>• Majority of RAs use standard s7 police check or overseas equivalent</li> </ul>
Policy on convictions or other matters preventing employment/practice	<ul style="list-style-type: none"> <li>• Majority of agencies have a specified policy or have issued guidelines.</li> <li>• Majority of RAs consider the matter case by case</li> </ul>
Check for being able to legally work in NZ	<ul style="list-style-type: none"> <li>• Majority of agencies check work visas or rely on checks done by relevant professional association/body</li> <li>• Two agencies advise they use the DoL/MBIE Visa View service</li> </ul>
Insolvency Checks	<ul style="list-style-type: none"> <li>• Majority of agencies do not check for insolvency or only check for financial roles</li> </ul>
Organisation specific checks	<ul style="list-style-type: none"> <li>• Agencies with service related databases check against their internal records (e.g. Child Youth and Family's CYRAS database)</li> </ul>

11. Safety checks are not, however, currently mandatory across the children's workforce, or consistently rigorous. Consideration of existing practice across the state sector suggests the following weaknesses:

- Processes are based on historic norms that have developed within sectors and professions, rather than being risk based, and so do not adequately provide for all individuals who work with children. For example, GPs do not currently have to undergo Police vets and their registration is not assessed against the risk they might pose to children.
- Even where there are requirements, there are significant gaps that mean the checks are less effective. In particular current requirements show an over-reliance on Police vets and criminal history checks, with little provision for identity verification and limited use of the CYRAS database.
- They do little to support effective decision making. Requirements are focussed on what information needs to be gathered while little direction or guidance is provided on how to assess it to determine the risk posed. For example, little guidance is provided on how to interpret the results of Police vets.
- They are inconsistent and lack rigour in their application, enabling potential perpetrators to enter the workforce within roles where checking is more lax, or non-existent, and to gain the trust of employers and children. For example, the *Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector* identified a range of weakness within policy and practice that enabled an individual with a conviction for sexual offences against a child to enter the children's workforce and then move from school to school. For example, it found that identity verification was not up to the required standard, and there was a lack of proper information gathering through reference checking and proper engagement with the regulating authority.

12. Making a judgement based on analysis of the level of risk associated with a role and the information provided is a key part of rigorous safety checking. Yet, even where some guidance is available, there have been examples where organisations have made judgements that appear to be questionable to an external audience. In some cases, this is because individual organisations do not have the relevant information they need to challenge an applicant's presentation of their past behaviour, or because personal and community ties make challenging an applicant difficult.

13. Other jurisdictions have responded to similar challenges, and the way they have done so has informed the development of this policy:

- Most states and territories in Australia have introduced legislation providing for child-related employment pre-screening, or are working towards such legislation. Australia does not have a single national framework setting out any universal children’s workforce vetting or screening requirements. However, a nationally consistent approach is being progressed.
- In recent years the United Kingdom has moved away from a comprehensive registration system and shifted the onus of ensuring that people working with children are checked and cleared back onto the employer, through legislation.
- In Canada the responsibility of ensuring that people working with children are cleared is also placed on the employer. For example, there is a national point-in-time Vulnerable Sector check available to screen employees or volunteers, but no overarching legislation requiring organisations to use it. However, some provinces may require high-risk professions to be screened.
- In Europe, a 2011 European Union directive requires member countries to ensure that people convicted of any child sex offences are temporarily or permanently prevented from employment involving direct and regular contacts with children.

## Objectives

14. The White Paper reiterates the importance the Government places on ensuring a safe and competent children’s workforce.<sup>9</sup>
15. Overall, the objective of this project is to reduce the risk to children caused by inadequate vetting and screening processes, and ensure appropriate and rigorous vetting and screening is undertaken across the children’s workforce.
16. We have developed a set of criteria that make up a good vetting and screening system:
  - **effective for its purpose**
    - adopts a children first approach
    - risk of child harm by the children’s workforce is well managed and/or reduced
    - prevents entry for those who pose an unacceptable risk of child harm
    - builds on, and is consistent with, wider harm minimisation initiatives
  - **managing risk appropriately**
    - the response is proportionate to the risk
    - safe and competent people are not discouraged from entering the workforce
    - exemptions ensure checks are not required in low-risk situations
  - **ensuring accountability**
    - employers, professional bodies, facilitators and/or individuals (self-employed) are accountable for ensuring that checks are conducted
    - information used and decisions taken are documented and retained for the employment period
  - **being fair to all**
    - children’s workforce, employers/facilitators and parents who entrust their children to the workforce consider the initiative is fair

<sup>9</sup> For the purposes of this paper the use of the term ‘children’ or ‘child’ refers to individuals who are under 18 years of age.

- accounts for diverse personal circumstances and varied work situations
- process is transparent and minimises the risk of unfair discrimination
- appropriately takes account of individuals rights to privacy and privacy legislation
- appropriate rights of appeal
- **being efficient and cost effective**
  - checks are not overly onerous and are conducted in a timely manner
  - minimises the burden on employers and individuals
  - the initiative is cost effective (based on the informational available to assess).

## Options

17. The key elements that make up safety check mechanisms were identified, based on existing practice in New Zealand and other jurisdictions. These are:

- Breadth – Who should the regime effect?
- Depth – How intensive should the requirement be?
- Decision maker – Who makes decisions about risk?
- Mechanism – How should the regime be enacted?
- Implementation – How should the regime be managed?

18. Within each element a number of options were considered. These are show at Annex B: Options for the Safety Check Regime, alongside some summary discussion. These options were considered by the Children’s Action Plan Programme Executive (15 May) and the Vulnerable Children’s Board (23 May).

19. From this broader analysis, two scope options were chosen to be developed further.

20. Option 1 is a more tightly focused legislative regime

- Includes paid employees within child and family focussed services within the state sector and those within organisations contracted by this sector to deliver services; with local government brought in at a later date by Order-In-Council or similar.
- A voluntary framework would be provided to improve practice in other sectors (business and voluntary)

21. Option 2 is a more widely focused legislative regime

- Initially as Option 1, but the legislation would enable other sectors to be brought into scope of the requirement by Order-In-Council, if required.
- A voluntary framework would also be provided to improve practice in sectors not initially subject to the mandatory requirements.

22. It is proposed that, under either option, the Crown will be bound by the safety checks regime. Further, if Crown organisations are convicted of offences under the regime, it is proposed that they be able to be fined.

23. The two options are analysed below:

## ***Option 1 – Focusing legislation on the publically funded children’s workforce***

- **Effective for its purpose**

This approach will require improvements in practice in the state sector, which comprises a large proportion of the total children’s workforce. The state sector will be able to provide a model of best practice for other sectors to follow. Guidelines and other support could be put in place, both to support compliance with the legislation for those that it applies to and to help other sectors to improve their practice voluntarily.

There are a number of core children’s workforce roles outside of the state sector and activities contracted by it. There have been a number of high profile cases in other jurisdictions where individuals in these types of roles have been found to have abused children. A rigorous vetting and screening regime may have helped to prevent this. More robust checking and a ‘workforce restriction’ in the government sector may mean unsafe individuals migrate to roles where requirements are less rigorous and they can gain access to children more easily.

- **Managing risk appropriately**

Limiting the legislative requirement in this way could be viewed as a proportionate response to the level of risk posed by a small number of unsafe individuals who may seek to gain access to children by taking roles within the children’s workforce.

However, there is no evidence to suggest that the risk is greater within the Government funded sectors, than other sectors. It is more likely that there will be more individuals within the Government sector trained to recognise signs of abuse and so the risk may actually be lower.

- **Ensuring accountability**

Within the scope of the requirements, there will be strong legislative requirements that will hold regulated providers accountable for their vetting and screening practice. Where there are not legislative requirements options to hold employers to account are limited.

- **Being fair to all**

The legislative requirements will be defined to ensure that information collected and considered is reliable and that privacy concerns are appropriately managed. In sectors not subject to the requirements guidance could be provided to help providers manage privacy concerns and use information appropriately and providers will continue to be held to account by privacy legislation. Two regimes in operation will mean that some of the people who work with children are subject to the requirements, but others are not.

- **Being efficient and cost effective**

Carrying out a safety check will take time and effort. For example, the results of a Police vet can take up to 20 days to be returned. However, the majority of the government sector already have some requirements, a proportion of the workforce are registered, and for employees the vetting and screening processes can be integrated with usual recruitment processes. Delaying the extension of the legislative requirement to local government recognises that further work is needed to consider how it can be most effectively implemented within that sector and enable the necessary preparation to be done.

By removing the legislative requirement from some sectors, for example from volunteers, organisations will be able to decide on their own vetting and screening processes in reference to the new framework. This may mean that in some cases less comprehensive “lighter touch” procedures are followed, and in some cases organisations may elect to follow no procedures at all. This would reduce the risk of individuals being discouraged from volunteering and the burden on business and community organisations.

## **Option 2 – Legislation that can be extended to other sectors**

- **Effective for its purpose**

This approach will allow for there to be required improvements in practice in all sectors (if the scope is extended). It sends a message that consistent vetting and screening is important for the *whole* children's workforce. This messaging, and the prospect of the legislation effecting them at a later date, is likely to encourage providers from other sectors to adopt the voluntary regime. The state sector will still be able to provide a model of best practice for other sectors to follow as it will be phased in first. Guidelines and other support could be put in place, both to support compliance with the legislation for those that it applies to and to help other sectors to improve their practice voluntarily.

- **Managing risk appropriately**

This options is child centred and reflects that there is risk associated with all roles where there is significant contact, regardless of sector or employment status.

- **Ensuring accountability**

Within the scope of the requirements, there will be strong legislative requirements that will hold regulated providers accountable for their vetting and screening practice. This will include, potentially, all major sectors in the children's workforce.

- **Being fair to all**

Within the scope of the requirements, they can be designed to be fair to all stakeholders.

- **Being efficient and cost effective**

As with Option 1, carrying out a safety check will take time and effort, and so will place an additional burden on providers. Applying safety checks to business, community organisations may be viewed as overly onerous. A proportion of providers will already carry out some checks. However, it is assumed that checking is likely to be more patchy the business and voluntary sector as there are few existing requirements. Requirements to check may have a significant impact on organisations who rely on volunteers but who do not currently vet and screen them. It may also disincentivise individuals from volunteering.

The burden on providers can be minimised by ensuring the required checks represent a minimum standard, are tailored and proportional to the level of risk, can be flexibly implemented and minimise duplication so far as is feasible.

This option does not require us to change primary legislation if we decide to add these sectors (or parts of them) into the regime at a later time.

24. Alongside this, three options were also considered for the framing of the workforce restriction. The aim of the restriction is to ensure that individuals with specified convictions are not able to take up positions within the children’s workforce. These are included in table below, along with the benefits and risk of each.

Option	Specified convictions	Comment
<b>A</b>	<b><i>Modelled on the Child Harm Prevention Order (CHPO) list</i></b>	<ul style="list-style-type: none"> <li>• This option is based on the proposed CHPOs conviction list – largely equivalent to the qualifying offences to impose an Extended Supervision Order or the proposed Public Protection Order<sup>10</sup>.</li> <li>• However, some of the child abuse offences that are found under both other regimes are not included in the CHPO offence list because they:               <ul style="list-style-type: none"> <li>○ are unlikely to occur in situations that demonstrate an ongoing risk to children,</li> <li>○ are covered by alternative offences that are included in the CHPO regime, or</li> <li>○ involve conduct that does not cause direct harm through child contact (e.g. organising sex tours).</li> </ul> </li> <li>• Although this list consists of serious and mainly child-related offences, it has been deliberately framed in a restrictive way to balance risk against volume.</li> <li>• Limiting the convictions to those only against victims between 0 – 17 years is not feasible in relation to the workforce restriction as it is not possible to make this information consistently available to employers.</li> <li>• There is a strong rationale for including a broader range of convictions, such as organising sex tours, in the workforce restriction.</li> </ul>
<b>B</b>	<b><i>Modelled on the CHPO list, but not restricted to offences against children</i></b>	<ul style="list-style-type: none"> <li>• As per above, however this option does extend the scope of the offences to capture offences against the adult population as well as children.</li> <li>• As the convictions list is related to serious offences, this provides some further protection.</li> </ul>
<b>C</b>	<b><i>Serious violent and sex offences against children and adults</i></b>	<ul style="list-style-type: none"> <li>• This would include all offences listed in Option B. Plus the following convictions were also identified by New Zealand Police as being serious violent and sexual offences against children and adults.               <ul style="list-style-type: none"> <li>○ 129(1) attempt to commit sexual violation</li> <li>○ 129(2) assault with intent to commit sexual violation</li> <li>○ 139 indecent act between a woman and girl</li> <li>○ 140 indecency with boy under 12</li> </ul> </li> </ul>

<sup>10</sup> Currently proposed in the Public Safety (Public Protection Orders) Bill currently before Parliament.

		<ul style="list-style-type: none"> <li>○ 140A indecency with boy between 12 and 16</li> <li>○ 144C organising or promoting sex tours</li> <li>○ 190: Injuring by unlawful act</li> <li>○ 191 Aggravated wounding or injury</li> <li>○ 192 Aggravated assault</li> <li>○ 193 Assault with intent to injure</li> <li>○ 194 Assault on a child</li> <li>○ 195A Failure to protect child or vulnerable adult</li> <li>○ 196 Common Assault (serious assaults can be charged under this section)</li> <li>○ 198 Discharging a firearm or doing dangerous act with intent</li> </ul> <ul style="list-style-type: none"> <li>● This is a more comprehensive list of offences - selected because they are at the more serious end of offending and given a high sentence. However, a range of offences varying in seriousness, will sit under each conviction. Broadening the list therefore risks bringing into scope a number of applicants who have been convicted of less serious offences.</li> <li>● The applicants could then be exempted. However, this would take time and may cause them disruption and emotional stress. There would also be a cost to Government of administrating the exemption process.</li> <li>● Each of the convictions identified were considered separately against the criteria and against other similar protection mechanisms. A representative sample of this analysis is set out in Annex C.</li> </ul>
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## Costs

25. There are costs associated with both legislative options. Initially they would be the same, assuming phase 1 of the implementation of option 2 was restricted to the scope of option 1. The cost of option 2 would increase if and when a broader range of individuals and organisations were made subject to the requirement.
26. However, it is proposed that if and when the requirement is extended to this expanded group it should be done by Order-In-Counsel and after a specific decision by Cabinet. It is envisaged that further work will be carried out before such a decision is taken including: consultation with the sectors involved, an assessment of the costs and detailed implementation planning.

### *Costs to state sector organisations and contracted services (Option 1 and phase 1 of Option 2)*

27. The proposed regime will have a cost in terms of the time spent by employers on vetting and screening and a direct financial cost, if information must be purchased. The majority of this group already have some form of vetting and screening in place, and additional costs of the policy are not high.
28. The legislative requirements will specify the *minimum* safety check components, the costs of which consist, primarily, of the time needed to perform the required check. This time will be in addition to the time that is already spent assessing a candidate for suitability. For example, very little additional time is needed to verify identity onsite if the candidate is already present onsite for an interview.
29. We have estimated the cost of an *initial* standard safety check at approximately \$14 for the core workforce and \$9 for the wider workforce.
30. These costs are based on an average state sector worker who earns \$34.76 an hour<sup>11</sup>, and an assumption that the average time needed to vet and screen for a role would be:
- 23.5 minutes for the core workforce (comprised of 3 minutes for identity verification, 3 minutes for applying for a Police Vet, 5 minutes spent inquiring with professional bodies and 12.5 minutes of risk assessment).
  - 14 minutes for the wider workforce (comprised of 2 minutes for identity verification, 2 minutes for applying for a criminal history check, and 10 minutes of risk assessment).
31. These costs are averages. In many circumstances the required time will be short (i.e. it is likely to be a very simple and quick when information does not flag any concerns). The average therefore accounts for the small minority of checks that require additional effort to complete.
32. For 260,00 – 280,00 people in the state sector across education, health, welfare and justice, split into a core workforce of 170,000 – 180,000 and a wider workforce of 90,000 – 100,000, the total cost of the new regime is approximately between \$3,190,000 and

<sup>11</sup> The average per hourly earnings of a public servant, as per Stats NZ, NZ Average Hourly Earnings, March 2012.

\$3,420,000 across the three years. This assumes that numbers equivalent to the entire children’s workforce would need to be screened or rescreened over three years.

33. However, the degree to which providers already meet the requirements should be discounted against this cost. An estimation of current compliance was made by comparing the current practice of each segment of the state sector children’s workforce against the likely requirements of the guidelines, and assigning either a 0 (no compliance), 0.5 (partial compliance) or 0.8 (substantial compliance) to determine what fraction of the expected additional cost is already met by expected practice.

*Table: Examples of Currently undertaken actions for vetting and screening*

	Vetting and screening, as per current practice
<b>Education:</b>	
Teacher	Identity check, character check, Police vet (3 yr cycle), determination made.
Non teaching staff in schools	Identity check, character check, police vet (3 yr cycle), determination made
<b>Welfare:</b>	
CYF Social Worker	Identity check, CYRAS check, Police Vet, MoJ check, risk assessment
Residential Night Attendant	Identity check, CYRAS check, Police Vet, MoJ check, risk assessment
<b>Health:</b>	
Paediatric Nurse	Identity Check, MOJ convictions check at registration, Police Vet - pre employment by DHB
General Practitioner	Identity Check for registration, Police Vet (pre employment in some cases)

34. Through this methodology, it was estimated that \$2,660,000 - \$2,840,000 of the expected cost of performing an adequate is already met by existing practice.

35. Combining these estimates, the total cost of screening the state sector children’s workforce is estimated to be \$530,000 - \$580,000. Based on the assumption that this process will take three years, this produces an estimated cost increase for the state sector of \$177,000 - \$193,000 per year, or approximately \$180,000 - \$200,000.

36. Making the Crown criminally liable for breaches of the offence provisions, and able to be sentenced to pay a fine if convicted under the regime, will impose a cost on the Crown, particularly if it elects to defend itself. This cost is unquantified, as it depends on unknown levels of future compliance. However, it is likely to be small due to a number of factors:

- the Crown is unlikely to be prosecuted frequently, as there are other mechanisms available to ensure compliance with legal requirements
- generally there are low levels of prosecutions expected, as active enforcement and monitoring is not envisioned
- restitution is unlikely to be available (as the offence provisions will not have identifiable victims beyond the Crown) so fines levied will be paid to the Crown, acting as a transfer payment rather than a net loss to the Crown.

*Costs to other sectors to be included in Option 2*

37. The cost of performing an adequate check for the private and volunteer sectors is expected to be similar to that for the state sector (\$14 for the core workforce and \$9 for the wider), as the requirements will be equivalent. However, as their current compliance rates will likely be lower, the necessary increased expenditure per check to reach this level may be higher.

38. It is not possible to give a total cost estimate, as reliable data about the size of the children's workforce in these sectors is not available.

*Costs to individuals working in the children's workforce*

39. There will also be a time impact for the members of the children's workforce who will have to spend more time in meeting the requirements as part of any application process (e.g. in sourcing and providing additional identity verification documents). The cost on individual applicants is not included in the costing.

*Impact of current cost recovery proposals on the standard safety check regime*

40. New Zealand Police has recently carried out public consultation on cost recovery for certain police services, in particular vetting.

Section 9(2)(g)(i) OIA

*Cost of support and monitoring*

42. There will also be a cost to central agencies and organisations that provide information relevant to the safety check, due to an increase in demand for such information. For example, it is expected that demand for the Police Vetting Service will increase, as may demand for CYRAS database checks. There may be some increase in the number of queries received by professional bodies and training institutions seeking confirmation of the records they hold on applicants.

43. There are initial costs associated with the production and publication of guidance materials, which will be met by funding associated with the implementation of the Children's Action Plan. Consideration is also being given to what additional engagement and training might need to be made centrally available, either as part of wider workforce training, or targeted to specific needs.

44. The Ministry of Education, Ministry of Health, Ministry of Social Development and Ministry of Justice will be responsible for the implementation and monitoring of standard safety checks in their sectors. If the requirement is expanded to other sectors it is envisaged that similar responsibilities may be undertaken by the Ministry for Business, Innovation and Employment and the Department of Internal Affairs. However, the sector-led approach will enable any actions to be tailored appropriately to the sector involved.

Section 9(2)(g)(i) OIA

45. As monitoring will be undertaken through existing mechanisms, it is not envisaged that there will be major additional costs. There may be some initial costs incurred by agencies in the set up phase due to the need to support implementation and consider if and how to build consideration of compliance with the new framework into existing monitoring and contractual arrangements.

#### *Cost of the exemption process*

46. It is not possible to estimate how many exemptions may be lodged each year however, depending on the configuration of the administrative exemption process, it is estimated that the cost could be in the region of \$500 - \$1200 per exemption.<sup>13</sup>

47. It is envisaged this cost will be met by the central agencies administering the exemption process.

#### **Benefits**

48. There is evidence that rigorous vetting and screening processes can provide a barrier to individuals who are considered to be a risk from entering the children's workforce. For example, in Queensland's, which has a centralised vetting and screening system for the children's workforce, since 2001 5,800 high-risk individuals have been prevented from working in child-related services. The numbers remain high over time (over 860 in 2011/12) showing that inappropriate people continue to seek to engage with children through work. Of the 860 or so refused admission in 2011/12 – 43% had violence-related offences; 20% drug/violence offences; 12% drug offences; 7% child violence; 5% sexual offences; 7% child-sex offences; 6% other discipline info and other offences.

49. It is not possible to estimate, however, the number of these individuals who would have also been identified through existing recruitment processes or who would not have gone on to offend against children whilst in the workforce. There will also continue to be individuals whose vetting and screening results engender no concern, but who are later found to be a risk to children.

50. The impact of child maltreatment is inherently difficult to define because children can be harmed in many different ways, of which abuse, whether physical, sexual or emotional, is only one. However, we do know that the impact of abuse on the children and families involved can be severe. In addition, people who are maltreated as children may have an increased risk of, for example, drug and alcohol misuse, juvenile delinquency/conduct disorders and mental health problems. Not all people who are maltreated as children will develop these problems. However, for those people who do, the financial costs to them and society can be substantial.

51. There will also be direct cost to the state associated with responding to an incident of abuse. For example, the cost of social service assessments, health assessments, counselling and support, and court time. Financial costs of the engagement of an unsafe person can also be incurred directly by organisations through the loss of reputation, loss of funding contracts, negative impacts on staff retention/morale, and the possibility of litigation costs for not taking all possible steps to prevent abuse.

<sup>13</sup> This ranges from \$500 per administrative exemption for a paper-based administrative exemptions process, considered by two senior officials to \$1200 per administrative exemption for a panel-based administrative exemptions process, attended by two senior agency officials.

## Preferred option

52. Both options 1 and 2 for the scope of the standard safety checks legislation are being put to Cabinet Social Policy Committee, alongside detail of a framework to support and encourage organisations to improve practice in vetting and screening voluntarily.
53. The Vulnerable Children's Board has recommended Option 2, and it is the preferred option being put the Cabinet Social Policy Committee.
54. A workforce restriction for individuals with certain convictions is also being proposed. It will only be applied to the core workforce and to the same group of organisations that also have a responsibility to carry out a standard safety check.
55. It is proposed that the following convictions be included in the workforce restriction:

### Offences against children, or vulnerable people

- 131 Sexual conduct with dependent family member
- 131B Meeting young person following sexual grooming etc
- 132 Sexual conduct with child under 12
- 134 Sexual conduct with young person under 16
- 138 Sexual exploitation of person with significant impairment
- 144A Sexual conduct with children and young people outside NZ
- 144C Organising or promoting child sex tours
- 154 Abandoning child under 6
- 178 Infanticide
- 194 Assault on a child
- 195 Ill treatment or neglect of child or vulnerable adult
- 195 Failure to protect child or vulnerable adult
- 210 Abduction of young person under 16
- N/A Indecent communication with a child or minor (proposed offence)<sup>14</sup>

### Offences against adults and children

- 128B Sexual Violation
- 129 Attempted Sexual Violation and assault with intent to commit sexual violation
- 129A Sexual conduct with consent induced by certain threats and indecent act on another person knowing they were induced to consent by threats
- 130 Incest
- 135 Indecent Assault
- 167 Murder
- 171 Manslaughter
- 173 Attempt to Murder
- 188 Wounding with intent (including reckless disregard)
- 189(1) Injuring with intent
- 191 Aggravated wounding or injury
- 198 Discharging firearm or doing dangerous act with intent

<sup>14</sup> As being drafted for inclusion in the Addressing Child Pornography and Related Offending Bill.

- 208 Abduction for purposes of marriage or sexual connection.
56. Analysis of these convictions against other conviction-based restrictions (e.g., Extended Supervision Orders, Three Strikes Policy) is included in Annex C.
57. Some conviction categories span a range of offending behaviours, including lower level offending (e.g. assault on a child) or unintended harm (e.g. manslaughter), and some offenders may have successfully undertaken rehabilitation and, supported by their employers, provide enormous value in their work with adults and at-risk young people because of their history. It is therefore considered beneficial that the workforce restriction include a process for exemptions.

## Consultation

58. The Green Paper for Vulnerable Children was released in July 2011 for public consultation. It asked a range of questions related to support and services for vulnerable children including some specific questions related to the children's workforce, for example:
- What can be done to improve or promote collaboration between professionals and services?
  - What principles, competencies or quality standards should be included in the minimum standards for a workforce for children?
  - Who should be included in a workforce for children?
  - What other changes could be made to increase the effectiveness of those who work with vulnerable children?
59. Close to 10,000 public submissions were received on the Green Paper for Vulnerable Children, plus responses from around 2,000 children to a four point questionnaire. Several submissions addressed the scope of the workforce, minimum standards and "identified the importance of thorough vetting of staff and volunteers working with vulnerable children and families" (e.g. the Big Buddy programme recommended more extensive and consistent vetting and screening).<sup>15</sup>
60. Submissions on the Green Paper informed the development of the White Paper and have informed the development of these options. A cross-agency steering and working groups comprised of relevant agencies was also established for the development of the White Paper – and non-government practice and operational professionals from the education, health, social services and justice sectors were consulted as part of the development of the White Paper.
61. A half day workshop was held in March with a range of stakeholders to discuss the commitments set out in the Children's Action Plan directly related to the children's workforce and issues and options related to vetting and screening have been discussed specifically with a smaller number of organisations with a key interest.
62. There has also been substantial agency consultation. The Ministry of Education is the author of this paper. The New Zealand Police, Ministry of Social Development (including Child, Youth and Family), Ministry of Education, Ministry of Health, Ministry of Justice and Te Puni Kōkiri have developed the proposals in this paper, via a cross-agency project. The Department of Corrections, the State Services Commission, the Treasury, the

<sup>15</sup> <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/green-paper-vulnerable-children/the-green-paper-for-vulnerable-children-submissions.pdf>

Department of Internal Affairs and the Ministry of Business Innovation and Employment have also been consulted on this proposal.

63. The paper has been considered by the Vulnerable Children's Board and the Ministerial Oversight Group. These bodies have provided a forum for other agencies to raise concerns, which have been addressed during the development of this proposal.
64. Consultation has also begun on the content of best practice guidelines, the development of which will inform the associated regulations and guidelines for the new regime, which will set out the specific details of the new requirements.
65. The public will also have further opportunity to comment on these proposals at the Select Committee stage of the Vulnerable Children's Bill.

## **Implementation**

66. The process of implementation is similar across both scoping options, involving a new legislative requirement, a phased roll-out, and action to support compliance.

### *Establishing the legislative requirement*

67. The main definitions and requirements for the standard safety check regime will be established in a primary legislation, with specific implementation detail in delegated legislation.
68. A group of 'regulated activities' will be specified in primary legislation. This group will include activities that are focused on providing child development, care, advice and support. Organisations that deliver services that provide regulated activities will be required to conduct safety checks on relevant employees. This will ensure that regulation focuses directly on child-related work and settings and does not capture unintended groups.
69. Depending on the option chosen, this list of regulated activities will either be limited to employees working within activities provided by the state sector and state sector contractors (Option 1), or it will be extended (although inoperable until Order in Council or similar) to cover roles in the private sector and volunteer sector (Option 2).
70. Primary legislation will also include powers to specify in regulation additional roles, positions, organisations or activities within the state sector that should be included or exempted in different circumstances. This will provide further clarity on the activities, specific organisations, establishments or roles covered in a 'regulated activity' and provide flexibility over time to adjust the scope of the policy.

### *Phasing in the requirement*

71. The size of the workforce covered by the new legislative requirement means that concurrent implementation is not feasible. Some organisations may need to make some changes to recruitment policies and systems, or their registration processes.
72. It is therefore proposed that the requirements be phased to come into affect over a staggered period of time, following the passage of the legislation. The Vulnerable Children's Bill is due to be approved for introduction to the House during the second half of 2013. If it is agreed by Parliament, phasing could commence as early as July 2014,

with all relevant individuals having met the requirements by July 2018. This will be worked through further during the drafting of the legislation and feedback from stakeholders during the passage of the Bill.

73. The workforce restriction could come into force, for new applicants, as early as July 2014, and the existing workforce in July 2015
74. Further work will be undertaken to prepare for implementation before the Bill is passed. In particular each sector (health, education, welfare and justice) will prepare a sector-specific implementation plan for how the proposed standard safety checks will be communicated to, and implemented within, each sector. Operational guidelines will also be prepared to support the practice changes resulting from the amendment legislation. If it is decided that the scheme will in fact be extended to the private sector and volunteer sector (as permitted by Option 2) additional work would need to be done to support implementation in those sectors.

#### *Non-mandatory framework*

75. A non-mandatory framework will be developed prior to the legislation coming into force to support all providers to improve their practice. This framework will focus on the distribution of non-mandatory best practice guidelines on vetting and screening. These guidelines will be designed to be accessible and straightforward for organisations to implement, while also representing a robust general approach to vetting and screening.
76. It is currently envisioned that the guidelines will include supplementary material specifically designed to support volunteer organisations, recognising the fact that many of these organisations lack formal recruitment processes, and so will need additional support to implement such guidelines.
77. Given that these non-mandatory guidelines will be published prior to the implementation of the mandatory framework, they will also provide organisations that will be subject to the legislative requirement with an opportunity to align their vetting and screening processes prior to regulation. This will ease the transition to a mandatory regime, as well as provide the option of evaluation before the mandatory guidelines are enforced.

#### *Implementation risks*

78. First, there are the risks associated with Option 1:
  - There are a number of core children's workforce roles outside of the state sector and activities contracted by it. There have been a number of high profile cases in other jurisdictions where individuals in these types of roles have been found to have abused children. A rigorous vetting and screening regime may have helped to prevent this.
  - More robust checking and a 'workforce restriction' in the state sector may mean unsafe individuals migrate to roles outside the state sector where requirements are less rigorous.
79. For both options, an important risk is the risk of lack of engagement. Specific consultation on standard safety checks was not undertaken in the Green Paper and, due to tight legislative timescales, only limited consultation has been carried out during policy

development. This risk can be partially mitigated by phasing in the requirement, and by undertaking strong consultation now.

80. The other primary risks are detailed below:

- Changes may not be consistent with organisations' current processes, place a burden on them and so be resisted. This can be partially mitigated by phasing options, working closely with organisations to tailor the requirements and build on existing processes and engagement focusing on the benefits of change.
- Some people may be discouraged from the children's workforce, including volunteers. This can be partially mitigated through an engagement approach that focuses on the benefits to children, and the improved status and safety of the children's workforce.
- Employers will interpret the workforce restriction as saying that all other individuals, without restricted convictions, are safe to be engaged. This can be partially mitigated through messaging and guidance.

#### *Fiscal costs of implementation*

81. Any start-up or ongoing costs, whether those costs are borne within baselines or are partially or fully funded from funding available for all of the initiatives under the Children's Action Plan, will be determined as part of the assessment of the overall fiscal implications of that plan. It is intended that the legislation will not come into force until decisions about the provision of adequate funding have been made.

#### *Enforcement strategy*

82. Enforcement will be done on a sector-based, agency-led approach. It is not envisioned that extensive enforcement action will be required. Phase 1 implementation (state sector) will build on existing compliance and enforcement mechanisms and we do not expect the additional costs during this phase to be high. However, the costs to agencies and sectors of the potential Phase 2 rollout are not known.

### **Monitoring and review**

83. There is no information available about the prevalence of child abuse perpetrated individuals within the children's workforce in New Zealand. To address this, agencies with responsibility for recording and responding to child abuse allegations (Child, Youth and Family, New Zealand Police and the Ministry of Justice) will consider how their current recording systems can be optimised to include this information - by the first phase of implementation of the policy.

84. Once systems used to record child abuse are able to record where these incidences occur at the hands of a member of the children's workforce, we can identify the size of the current problem and monitor the impact of the policy over time.

85. Monitoring will support compliance with the new requirements. Monitoring processes for each phase will be developed as part of the implementation planning, it is not envisaged to be intensive and will build on existing monitoring in each sector. It is therefore not

anticipated that they will place a significant additional burden on the organisations involved.

86. The new vetting and screening requirements will be evaluated as part of the children's workforce programme, and this will be set out in the Children's Action Workforce Plan, due to be published at the end of 2013.

87. Assessing the impact of the standard safety checks legislative changes will be challenging, because they will be rolled out as part of a wider reform package to support vulnerable children. As noted above, changes in recording abuse information will enable the impact of the policy to be noted over time following the establishment of the requirements

## Annex A: Estimated size of the state sector children's workforce

The numbers detailed in the table below are not definitive – they are point-in-time estimates only.

**Table: Estimated size of the children's workforce**

Sector	Workforce role	CORE workforce <sup>1</sup>		WIDER workforce <sup>2</sup>		TOTAL WORKFORCE	
		- estimated size		- estimated size			
		low	high	low	high	low	high
Education	Registered school teachers (including Principals, TESOL teachers)	86,000	86,000	-	-	86,000	86,000
	Non-teaching school staff	-	-	11,500	11,500	11,500	11,500
	Teacher Aides	11,500	11,500	-	-	11,500	11,500
	Registered ECE teachers	14,000	14,000	-	-	14,000	14,000
	Unregistered ECE teachers and non-teaching staff	13,948	13,948	-	-	13,948	13,948
	Others (significant child contact)	3,362	4,197	-	-	3,362	4,197
	Others (some child contact)	-	-	6,407	6,407	6,407	6,407
		<b>128,810</b>	<b>129,645</b>	<b>17,907</b>	<b>17,907</b>	<b>146,717</b>	<b>147,552</b>
Health	Paediatric doctors/nurses *	3,125	3,869	-	-	3,125	3,869
	General doctors/nurses **	9,840	13,094	24,343	27,513	34,183	40,607
	Non-regulated workers ***	2,238	4,103	13,279	15,879	15,517	19,982
	Others (significant child contact) ****	60	130	-	-	60	130
	Others (some child contact) *****	5,212	6,438	12,000	15,000	17,212	21,438
		<b>20,475</b>	<b>27,634</b>	<b>49,622</b>	<b>58,392</b>	<b>70,097</b>	<b>86,026</b>
Welfare	CYF frontline child contact staff	2,655	2,695	-	-	2,655	2,695
	Oscar Provider Staff	4,100	4,500	-	-	4,100	4,500
	Contract Service Provider Staff (FACS)	7,680	8,800	-	-	7,680	8,800
	MYD and Work and Income (staff and contracted personnel)	4,929	4,949	2,620	2,620	7,549	7,569
	Others (significant child contact)	1,500	3,358	-	-	1,500	3,358
		<b>20,864</b>	<b>24,302</b>	<b>2,620</b>	<b>2,620</b>	<b>23,484</b>	<b>26,922</b>
Justice	Police Officers	700	700	7,637	7,637	8,337	8,337
	Others (significant child contact)	644	744	-	-	644	744
	Others (some child contact)	-	-	12,292	12,898	12,292	12,898
		<b>1,344</b>	<b>1,444</b>	<b>19,929</b>	<b>20,535</b>	<b>21,273</b>	<b>21,979</b>
		<b>171,493</b>	<b>183,025</b>	<b>90,078</b>	<b>99,454</b>	<b>261,571</b>	<b>282,479</b>

### Assumptions and caveats:

- 1 CORE workforce is based on people who have control of, or work alone with, children.
- 2 WIDER workforce is based on people with some child contact in their role.
- 3 Workforce numbers are official estimates only (provided by the Ministries of Education, Health, Social Development, Justice and New Zealand Police).
- 4 There will be some double counting (e.g. people may work in main public sector roles, but also in another role - a part-time teacher may volunteer with Barnadoes).
- 5 Workforce numbers will change as they will with definitions (yet to be developed) of 'core' and 'wider' roles.

\* Includes Midwives, plunket nurses, school nurses.

\*\* Includes GPs, junior doctors (on rotation), Specialists, Public Health Nurses, Registered nurses child and family health and community health, mental health nurses.

\*\*\* Workers who are not registered e.g. child care support workers, child and mental health assistant, health assistant.

\*\*\*\* Includes allied and technical workforce e.g. therapists, psychologists, counsellors, early intervention teachers.

\*\*\*\*\* Includes others in allied and technical workforce that deal with adults and children.

# Safety Checks Regime Options

<b>breadth</b> <i>who should the regime affect?</i>		<b>depth</b> <i>how intense should the requirements be?</i>	<b>decision maker</b> <i>who makes the decision about risk?</i>	<b>mechanism</b> <i>how should regime be enacted?</i>	<b>implementation</b> <i>how should regime be managed?</i>
<b>Government sector</b> <i>state sector and contracted services, Crown Entities, registration and licensing</i>	<b>specified regulated activities</b> <i>defined child or family focussed activities</i>	<b>comprehensive</b> <i>robust and extensive requirements</i>	<b>fully centralised</b> <i>workforce restrictions (Govt decision) – other decisions made by a public sector body</i>	<b>over-arching legislation</b> <i>new legislation setting out the regime</i>	<b>new entity</b> <i>a new organisation overseeing implementation and management of the regime</i>
<b>Local Government</b> <i>community services (e.g. swim schools, library programmes, youth mentors)</i>	<b>paid core workforce roles in regulated activities</b> <i>people who have control of, or work alone with, children</i>	<b>moderate</b> <i>minimum requirements and best practice guidelines</i>	<b>semi-centralised</b> <i>substantial workforce restrictions (Govt decision) – other decisions made by employers</i>	<b>changes to primary legislation</b> <i>amend existing primary (and delegated) legislation to reflect new regime</i>	<b>single agency</b> <i>single agency oversees the overall implementation and management of the regime</i>
<b>business sector</b> <i>pay-to-play services (e.g. Chipmunks), children’s entertainers, music/dance teachers, maths tutors</i>	<b>paid wider workforce roles</b> <i>people with some child contact as part of their job or service</i>	<b>voluntary</b> <i>recommended best practice guidelines</i>	<b>semi-devolved</b> <i>limited workforce restrictions (Govt decision) – other decisions made by employers</i>	<b>existing mechanisms</b> <i>enforce where possible (e.g. through registration, licensing and contracting)</i>	<b>shared governance, but sector management</b> <i>selected agencies oversees the overall implementation and management of the regime</i>
<b>voluntary sector</b> <i>community organisations (e.g. Scouts, churches, sports teams), coaches, mentors</i>	<b>volunteers</b> <i>supervised and unsupervised volunteers</i>	<ul style="list-style-type: none"> <li>• Comprehensive regime would ensure consistency and rigour, but may be resource-intensive and may not be disproportionate in some cases.</li> <li>• Evidence suggests that a number of key elements are essential for effective vetting and screening. These should be seen as a core minimum standards.</li> <li>• A moderate approach would ensure the minimum basic standards of effective vetting and screening are adhered to, while providing some flexibility in how these are implemented and allowing different agencies to go further if desired.</li> <li>• Proportionality could be increased by varying the requirement based on level of risk. It could also be varied depending on other aspects of the role (e.g. employment status, sector).</li> <li>• A voluntary regime would provide increased flexibility but is likely to result in patchy implementations and gaps.</li> </ul>	<b>fully devolved</b> <i>all decisions made by employer</i>	<b>no legislation</b> <i>encourage and promote best practices in vetting and screening</i>	<b>separate sector governance and management</b> <i>each sector agency responsible for implementation and management in their own sector</i>
<ul style="list-style-type: none"> <li>• There are a number of mechanisms for defining the scope: sector, level of child contact, employment status, and service provided.</li> <li>• The scope of the regime needs to be proportionate and consider the level of risk (amount of child contact, degree of supervision). Level of risk also needs to be balanced with the additional burden on those subject to the requirement, (compliance costs for employers and individuals, potential to discourage volunteers).</li> <li>• Limiting the requirement to govt and govt-funded agencies would reduce the administrative burden on private and voluntary agencies, recognise that employers, service providers and parents have responsibilities to keep children safe and reflect the high expectations on the services that the public fund. It may, however, mean that perpetrators may seek child contact through private / voluntary organisations with less stringent safety checks.</li> <li>• Exemptions could be provided to specific group where it was felt that a requirement was not appropriate. Implementation could also be phased over time.</li> </ul>			<ul style="list-style-type: none"> <li>• A centralised system ensures consistency and would allow individuals to move between organisations without checks being repeated. However, it would be costly and bureaucratic, some elements of the checks would also continue to need to be carried out by the employer.</li> <li>• Devolved system leaves all decisions to the employer, who should have primary responsibility for safety of children in their care, and is often best placed to assess overall risk.</li> <li>• A limited workforce restriction ensures some fundamental lines are drawn around workforce integrity (exemptions ensure that the restriction is appropriate).</li> </ul>	<ul style="list-style-type: none"> <li>• Implementation via overarching legislation ensures a consistent regime, and be a swift and efficient mechanism for change. It would also provide clarity that the children’s workforce in different sectors were required to meet the same safety standards.</li> <li>• New legislation is necessary to introduce a mandatory framework that applies to the private and voluntary sectors.</li> <li>• Implementation via a non-legislative mechanisms could be complicated and time-consuming, particularly due to the complexity of the governance arrangements in the Health and Education sectors. It could also make ongoing maintenance of the scheme difficult.</li> </ul>	<p>Implementation includes:</p> <ul style="list-style-type: none"> <li>• maintenance of the legislation</li> <li>• promotion of the regime</li> <li>• Administration of exemptions</li> <li>• Compliance, enforcement</li> <li>• Reporting.</li> <li>• Implementation dependent on which options are chosen for breath, depth, and structure of the regime. If a centralised system is chosen implementation by a single agency would be beneficial.</li> <li>• Sector led implementation would enable a flexible approach to be used that builds on existing structures, relationships and mechanisms, rather than a one-size-fits all system that is overlaid on existing processes.</li> </ul>

## Annex C: Specified offences for the workforce restriction

There is already a number of protection mechanisms in place aimed at increasing safety for children or the general public. The workforce restriction is another protection mechanism aimed at preventing known offenders from working in the core children's workforce.

Protection mechanisms with a **focus on a particular child or children:**

- **Child Harm Protection Orders** (conditions on high risk people to mitigate risks to children)<sup>16</sup>
- **Extended Supervision Orders** (conditions on offenders against children or impaired people)
- **Subsequent child policy** (parents who have had children permanently removed, or die in their care, due to abuse or neglect must demonstrate that they are safe to parent a subsequent child)<sup>17</sup>

Protection mechanisms with a **focus on the general public:**

- **Sentencing and Parole Reform Act 2010 'three strikes' policy** (a three stage regime of increasing consequences for repeat serious violent offenders)
- **Land Transport Act s29** (offences prohibiting people from holding a passenger licence)
- **Public Protection Order** (allows detention of very high risk individuals)<sup>18</sup>.

The table below shows the alignment between the workforce restriction and other protection mechanisms.

**Table 3: Comparison of workforce restriction offences with other protection mechanisms**

SPECIFIED OFFENCE  [i.e. Crimes Act 1961 section <u>Offence</u> (maximum sentence)]	No of convictions 2003-2012	CHILD focussed mechanisms				GENERAL focussed mechanisms		
		Workforce Restriction	Child Harm Protection Order <sup>19</sup>	Extended Supervision Order <sup>19</sup>	Subsequent child	Three strikes policy	Land Transport Act s29	Public Protection Order
<b>Offences against children, or vulnerable people:</b>								
s131(1) <u>Sexual conduct with dependent family member</u> (not exceeding 7 years)	15	✓	✓	✓	✗	✓	✓	✓
s131B <u>Meeting young person following sexual grooming, etc</u> (not exceeding 7 years)	1	✓	✓	✓	✗	✓	✓	✓
s132 <u>Sexual conduct with child under 12</u> (not exceeding 14 years)	888	✓	✓	✓	✗	✓	✓	✓
s134 <u>Sexual conduct with young person under 16</u> (not exceeding 10 years)	1,205	✓	✓	✓	✗	✓	✓	✓
s138 <u>Sexual exploitation of person with significant impairment</u> (not exceeding 10 years)	15	✓	✓	✓	✗	✓	✓	✓
s144A <u>Sexual conduct with children and young people outside NZ</u> (not exceeding 14 years)	2	✓	✓	✓	✗	✓	✓	✓
s144C <u>Organising or promoting child sex tours</u> (not exceeding 7 years)	-	✓	✗	✓	✗	✗	✓	✓
s154 <u>Abandoning child under 6</u> (not exceeding 7 years)	31	✓	✓	✗	✗	✗	✗	✗
s178 <u>Infanticide</u> (not exceeding 3 years)	7	✓	✓	✗	✓	✗	✗	✗
s194 <u>Assault on a child</u> (not exceeding 10 years)	3,341	✓	✗	✗	✗	✗	✗	✗

<sup>16</sup> *Child Harm Prevention Orders*, agreed by Cabinet on 22 April for inclusion in the Vulnerable Children's Bill [SOC Min (13) 7/9], will impose certain conditions on high risk people to mitigate risks to children.

<sup>17</sup> The *subsequent child policy* is intended apply to a wider group of individuals than Child Harm Prevention Orders, and is being considered by Cabinet in June for inclusion in the Vulnerable Children's Bill.

<sup>18</sup> *Public Protection Orders*, proposed in the Public Safety (Public Protection Orders) Bill currently before Parliament, will allow the detention of very high risk individuals at a secure facility within prison precincts.

<sup>19</sup> Convictions only relevant for victims of a certain age (e.g. 0-17 years), which varies relative to the offence).

s195 <i>Ill-treatment or neglect of child or vulnerable adult</i> (not exceeding 10 years)	194	✓	✓	✗	✗	✗	✗	✗
s195A <i>Failure to protect a child or vulnerable adult</i> (not exceeding 10 years)	1	✓	✗	✗	✗	✗	✗	✗
s210 <i>Abduction of young person under 16</i> (not exceeding 7 years)	55	✓	✓	✓	✗	✗	✓	✓
<i>Indecent communication with a child or minor</i> (proposed offence)	N/A	✓	✓	-	✗	-	-	-
<b>Offences against adults and children:</b>								
s128B <i>Sexual violation</i> (not exceeding 20 years)	2,047	✓	✓	✓	✗	✓	✓	✓
s129 <i>Attempted sexual violation and assault with intent to commit sexual violation</i> (not exceeding 10 years)	171	✓	✓	✓	✗	✓	✓	✓
s129A <i>Sexual conduct with consent induced by certain threats</i> (not exceeding 14 years)	5	✓	✓	✓	✗	✓	✓	✓
s130 <i>Incest</i> (not exceeding 10 years)	40	✓	✓	✓	✗	✗	✓	✓
s135 <i>Indecent assault</i> (not exceeding 7 years)	1,099	✓	✓	✓	✗	✓	✓	✓
s171 <i>Manslaughter</i> (maximum life sentence)	232	✓	✓	✗	✓	✓	✗	✓
s167 <i>Murder</i> (maximum life sentence)	281	✓	✓	✗	✓	✓	✓	✗
s173 <i>Attempt to murder</i> (not exceeding 14 years)	66	✓	✓	✗	✗	✓	✓	✓
s174 <i>Counselling or attempting to procure murder</i> (not exceeding 10 years)	2	✗	✗	✗	✗	✓	✓	✓
s175 <i>Conspiracy to murder</i> (not exceeding 10 years)	3	✗	✗	✗	✗	✓	✓	✓
s176 <i>Accessory after the fact to murder</i> (not exceeding 7 years)	19	✗	✗	✗	✗	✗	✓	✓
s188 <i>Wounding with intent</i> (not exceeding 14 years)	2,736	✓	✓	✗	✗	✓	✓	✓
s189 <i>Injuring with intent</i> (not exceeding 10 years)	551	✓	✓	✗	✗	✓	✓	✓
Sec 191 <i>Aggravated wounding or injury</i> (not exceeding 14 years)	132	✓	✗	✗	✗	✓	✓	✓
s198 <i>Discharging firearm or doing dangerous act with intent</i> (not exceeding 14 years)	99	✓	✗	✗	✗	✓	✓	✓
s198a <i>Using any firearm against law enforcement officer, etc</i> (not exceeding 14 years)	28	✗	✗	✗	✗	✓	✓	✓
s198B <i>Commission of crime with firearm</i> (not exceeding 10 years)	58	✗	✗	✗	✗	✓	✓	✓
s199 <i>Acid throwing</i> (not exceeding 14 years)	-	✗	✗	✗	✗	✗	✓	✓
s200 <i>Poisoning with intent</i> (not exceeding 14 years)	-	✗	✗	✗	✗	✓	✓	✗
s201 <i>Infecting with disease</i> (not exceeding 14 years)	1	✗	✗	✗	✗	✓	✗	✗
s208 <i>Abduction for purposes of marriage or sexual connection</i> (not exceeding 14 years)	23	✓	✓	✓	✗	✓	✓	✓
s209 <i>Kidnapping</i> (not exceeding 14 years)	575	✗	✗	✗	✗	✓	✓	✗
s232 <i>Aggravated burglary</i> (not exceeding 5 years)	426	✗	✗	✗	✗	✓	✗	✗
s234 <i>Robbery</i> (not exceeding 10 years)	1,451	✗	✗	✗	✗	✓	✓	✓
s235 <i>Aggravated robbery</i> (not exceeding 14 years)	3,165	✗	✗	✗	✗	✓	✓	✓
s236 <i>Assault with intent to rob</i> (not exceeding 14 years)	491	✗	✗	✗	✗	✓	✓	✓

Note: Administrative data records convictions differently and the actual number of convictions is slightly higher in some cases.