

Vulnerable Children Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Vulnerable Children Bill as reported from the Social Services Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- this bill comprising clauses 1 and 2, Part 1, and Schedules 1 and 2
 - the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Bill comprising subpart 1 of Part 3
 - the KiwiSaver (Vulnerable Children) Amendment Bill comprising subpart 2 of Part 3
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Vulnerable Children Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

text deleted

Hon Paula Bennett

Vulnerable Children Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Vulnerable Children Act **2014**.

- 2 Commencement**
 - (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in **subsections (2) and (3)**. 5
 - (2) **Section 18** and **Part 3** come into force on a date or dates to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions. 10
 - (3) Any provision not brought into force earlier comes into force 2 years after the date on which this Act receives the Royal assent.

- 3 Act binds the Crown** 15
 - (1) This **Act** binds the Crown.
 - (2) **Subsection (1)** is subject to **section 11** (effect of vulnerable children’s plan), **section 20** (effect of child protection policy), and **section 22** (application to Crown Organisations for offences relating to safety checking of children’s workers). 20

Part 1
Government priorities for vulnerable children and vulnerable children's plan

- 4 Purpose of this Part** 5
- The purpose of this **Part** is to—
- (a) support the Government's setting of priorities for improving the well-being of vulnerable children; and
 - (b) ensure that children's agencies work together to improve the well-being of vulnerable children.
- 5 Interpretation** 10
- (1) In this **Part**, unless the context otherwise requires,—
- child** means a person who—
- (a) is under the age of 18 years; and
 - (b) is not married or in a civil union
- children's agencies** mean those departments of State or instruments of the Crown that are, with the authority of the Prime Minister, for the time being responsible (alone, or with 1 or more other departments or instruments) for the administration of all or any provisions of 1 or more of the following Acts: 15
- (a) Children, Young Persons, and Their Families Act 1989: 20
 - (b) Education Act 1989:
 - (c) New Zealand Public Health and Disability Act 2000:
 - (d) Policing Act 2008:
 - (e) Sentencing Act 2002:
 - (f) any other Act or Acts for the time being prescribed 25 under **subsection (2)**
- children's Ministers** means the Ministers of the Crown who for the time being—
- (a) have relevant portfolio responsibilities for 1 or more of the children's agencies (but excluding all related Associate Ministers of the Crown, if any); or 30
 - (b) are designated by the Prime Minister as children's Ministers for the purpose of this **Part**
- responsible Minister** means the Minister of the Crown for the time being designated by the Prime Minister as the responsible 35 Minister for the purpose of this **Part**

vulnerable children means children of the kind or kinds (that may be or, as the case requires, have been and are currently) identified as vulnerable in the setting of Government priorities under **section 7**

vulnerable children’s plan means the plan prepared, approved, published, and from time to time amended or replaced, under this **Part**. 5

- (2) The Governor-General may, by Order in Council, prescribe any other Act or Acts for the purposes of **paragraph (f)** of the definition of children’s agencies in **subsection (1)**. 10

6 Improving the well-being of vulnerable children

In this **Part**, **improving the well-being of vulnerable children**, in relation to the setting of Government priorities under **section 7** and the preparation of the vulnerable children’s plan under **section 8**, means promoting the best interests of vulnerable children (having regard to the whole of their lives), including (without limitation) taking measures aimed at— 15

- (a) protecting them from abuse and neglect:
- (b) improving their physical and mental health and their cultural and emotional well-being: 20
- (c) improving their education and training and their participation in recreation and cultural activities:
- (d) strengthening their connection to their families, whānau, hapū, and iwi, or other culturally recognised family group: 25
- (e) increasing their participation in decision making about them, and their contribution to society:
- (f) improving their social and economic well-being.

7 Government priorities for vulnerable children

- (1) The responsible Minister may from time to time, after consulting the children’s Ministers, set Government priorities for improving the well-being of vulnerable children. 30
- (2) Priorities, and changes to priorities, set under this section must be set, or as soon as practicable recorded, in writing.
- (3) An instrument recording priorities set or changed under this section is neither a legislative instrument nor a disallowable 35

instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act.

8 Preparation of vulnerable children’s plan

- (1) The chief executives of the children’s agencies must after priorities are set or changed under **section 7** work together to do both of the following no later than a date specified (under this subsection and, if applicable, **section 12(1)(b)**) by the responsible Minister: 5
- (a) develop a draft vulnerable children’s plan; and 10
 - (b) submit it to the responsible Minister for approval.
- (2) The responsible Minister must, after consulting the children’s Ministers about the draft plan,—
- (a) approve the draft plan; or
 - (b) refer it to the chief executives of the children’s agencies for reconsideration, together with the Minister’s reasons for referring it back to the chief executives. 15
- (3) The chief executives, on receiving a referral under **subsection (2)(b)**, must reconsider the draft plan and, as soon as practicable, submit a revised draft plan to the Minister for approval under **subsection (1)**. 20
- (4) The vulnerable children’s plan must, after it is approved by the responsible Minister, be published (with, or without, any related reports accompanying the draft plan submitted for approval under **subsection (1)(b)**)— 25
- (a) in the *Gazette*; or
 - (b) by 1 or more other means of publication (for example, on Internet sites maintained by or on behalf of children’s agencies) each of which has been approved by the responsible Minister and notified in the *Gazette*. 30

9 Content of vulnerable children’s plan

The vulnerable children’s plan (and any draft of it) must set out steps that will be taken by chief executives of the children’s agencies to work together to achieve the Government’s priorities for improving the well-being of vulnerable children. 35

10 Duration of vulnerable children's plan

The vulnerable children's plan—

- (a) comes into effect on a date (after the date on which it is approved) specified in it for the purpose; and
- (b) continues in force until it is amended or replaced under **section 12.** 5

11 Effect of vulnerable children's plan

(1) Once the vulnerable children's plan has come into effect, the chief executive of each children's agency must—

- (a) report (jointly with each of the other chief executives of the children's agencies) to the responsible Minister, by a date in each year specified by the responsible Minister, on whether the agency has, or on the extent to which the agency has, before that date (and after the periods covered by all earlier reports, if any, under this paragraph), implemented the plan while it has been in force; and 10 15
- (b) ensure that a copy of every implementation report required by **paragraph (a)** is included in the agency's next annual report (under section 43 of the Public Finance Act 1989 or another enactment) and is available on an Internet site maintained by or on behalf of the agency. 20

(2) The vulnerable children's plan—

- (a) does not— 25
 - (i) create legal rules; or
 - (ii) create any legal right enforceable in a court of law; or
 - (iii) affect or limit the way in which a chief executive or other person is required to exercise a statutory power of decision; or 30
 - (iv) affect the interpretation of any enactment or the operation of a rule of law; and
- (b) is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act. 35

(3) **Subsection (2)** overrides **section 13(1)**.

12 Review and amendment or replacement of plan

- (1) The chief executives of the children’s agencies must, working together,—
- (a) review the vulnerable children’s plan—
 - (i) within 3 years of the date of its first approval under **section 8**; and 5
 - (ii) thereafter within 3 years of the date of each review of the plan under this section; and 10
 - (b) review the plan, within a time specified by the responsible Minister, if at any time the Government priorities set from time to time under **section 7** change. 10
- (2) When reviewing the vulnerable children’s plan, the chief executives must—
- (a) consider whether the plan is still consistent with current Government priorities set under **section 7**; and 15
 - (b) if the chief executives consider it appropriate, recommend to the responsible Minister that he or she—
 - (i) approve amendments to the plan; or
 - (ii) approve a new plan.
- (3) **Section 8(2) to (4)** applies with any necessary modifications. 20

13 Accountabilities

- (1) For the purposes of the operation of the legislative and executive branches of Government, in the setting and achieving of Government priorities in relation to vulnerable children, and in any matter relating to the vulnerable children’s plan,— 25
- (a) the responsible Minister is the Minister of the Crown who is accountable, both to Parliament and the Executive; and
 - (b) the chief executive of each of the children’s agencies is accountable to the responsible Minister. 30
- (2) **Subsection (1)**—
- (a) does not limit or affect—
 - (i) **section 11(2)** of this Act; or
 - (ii) the operation of the Public Finance Act 1989; or
 - (iii) the independence of the Commissioner of Police (as affirmed by sections 8(e) and 16(2) of the Policing Act 2008); but 35

- (b) overrides any contrary other law (for example, section 32 of the State Sector Act 1988).
- (3) A duty, function, or power of the responsible Minister, or of the chief executive of a children’s agency, is affected by this **Part** only to the extent necessary to give effect to **subsection (1)** 5 (as overridden by **section 11(2)**).

Part 2

Child protection policies

- 14 Purpose of this Part**

The purpose of this **Part** is to require child protection policies 10 (that must contain provisions on the identification and reporting of child abuse and neglect) to be—

 - (a) adopted and reported on by prescribed State services and DHBs boards; and
 - (b) adopted by school boards; and 15
 - (c) adopted by certain people with whom those services or boards enter into contracts or funding arrangements.

- 15 Interpretation**
 - (1) In this **Part**, unless the context otherwise requires,—
 - board**, in relation to a publicly-owned health and disability 20 organisation that is a DHB, means the members of the board of that organisation (who number not less than the required quorum) acting together as a board
 - child** means a person who is—
 - (a) a child as defined in section 2(1) of the Children, Young 25 Persons, and Their Families Act 1989 (because the person is a boy or girl under the age of 14 years); or
 - (b) a young person as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989 (because the person is— 30
 - (i) a boy or girl of or over the age of 14 years but under 17 years; and
 - (ii) not a person who is or has been married or in a civil union)

children's services means services that are any of the following:

- (a) services provided to 1 or more children:
- (b) services to adults in respect of 1 or more children:
- (c) services provided to adults living in households that include 1 or more children, and that— 5
 - (i) do or may affect significantly any 1 or more aspects of the well-being of those children; and
 - (ii) are for the time being prescribed under **subsection (2)**: 10
- (d) services provided in respect of children that are for the time being prescribed under **subsection (3)**

DHB means an organisation established as a DHB (that is to say, as a District Health Board) by or under section 19 of the New Zealand Public Health and Disability Act 2000 15

independent person, in relation to a prescribed State service and its chief executive, a board of a DHB, or a school board, means a person who is neither of the following:

- (a) a member of the board:
- (b) an employee or officer of the service or its chief executive, or the board 20

prescribed State service means each of the following:

- (a) the Ministry of Business, Innovation, and Employment:
- (b) the Ministry of Education:
- (c) the Ministry of Health 25
- (d) the Ministry of Justice:
- (e) the Ministry of Maori Development:
- (f) the Ministry of Social Development:
- (g) the New Zealand Police:
- (h) every other instrument for the time being prescribed under **subsection (4)** 30

school board means a board or body that is, or 1 or more managers who are,—

- (a) a board as defined in section 60, and for the purposes of Part 7 (control and management of State schools), of the Education Act 1989; or 35
- (b) a sponsor of a partnership school kura hourua (as those terms are defined in section 2(1) of that Act); or

- (c) the manager or managers of a private school that is registered under section 35A of that Act.
- (2) The Governor-General may, by Order in Council, prescribe, for the purposes of **paragraph (c)(ii)** of the definition of children’s services in **subsection (1)**, classes, descriptions, or kinds of services—
 - (a) provided to adults living in households that include 1 or more children; and
 - (b) that do or may affect significantly any 1 or more aspects of the well-being of those children.
- (3) The Governor-General may, by Order in Council, prescribe, for the purposes of **paragraph (d)** of the definition of children’s services in **subsection (1)**, classes, descriptions, or kinds of services provided in respect of children.
- (4) The Governor-General may, by Order in Council, prescribe, for the purposes of **paragraph (h)** of the definition of prescribed State service in **subsection (1)**, other instruments of the Crown in respect of the Government of New Zealand (whether departments, corporations, agencies, or other instruments), being instruments of that kind that are neither—
 - (a) DHBs; nor
 - (b) school boards.

16 Prescribed State services to adopt, report on, and require child protection policies

The chief executive of a prescribed State service must ensure that the service,—

- (a) if, after the commencement (under **section 2(1)**) of this section, the service is or becomes a provider of children’s services,—
 - (i) adopts, as soon as is practicable, a child protection policy; and
 - (iii) ensures that a copy of the policy is available on an Internet site maintained by or on behalf of the service; and
 - (iv) reviews the policy within 3 years of the date of its first adoption, or of its most recent review, under this section; and

- (b) ensures that every contract, or funding arrangement, that after that commencement the chief executive or the service (in either case, acting on the Crown’s behalf, or independently) enters into with an independent person requires the person as soon as is practicable to adopt (and to review in accordance with **paragraph (a)(iv)**) a child protection policy if, in the opinion of the chief executive of the State service,— 5
- (i) the person is or becomes a provider of children’s services; and 10
- (ii) some or all of the contract or arrangement is about providing children’s services; and
- (c) reports in its annual report (under section 43 of the Public Finance Act 1989 or another enactment) on whether, or on the extent to which,— 15
- (i) its operations have implemented any policy it is required to adopt under **paragraph (a)(i)**; and
- (ii) its contracts and funding arrangements have complied with **paragraph (b)**.
- 17 DHBs boards to adopt, report on, and require child protection policies** 20
- Every board of a DHB must—
- (a) adopt, as soon as is practicable after the commencement (under **section 2(1)**) of this section, a child protection policy; and 25
- (c) ensure that a copy of the policy is available on an Internet site maintained by or on behalf of the board; and
- (d) ensure that every contract, or funding arrangement, that after that commencement the board enters into with an independent person requires the person as soon as is practicable to adopt (and to review in accordance with **paragraph (e)**) a child protection policy if, in the opinion of the board,— 30
- (i) the person is or becomes a provider of children’s services; and 35
- (ii) some or all of the contract or arrangement is about providing children’s services; and

- (e) review the policy within 3 years of the date of its first adoption, or of its most recent review, under this section; and
- (f) report in its annual report (under section 150 of the Crown Entities Act 2004) on whether, or on the extent to which,—
 - (i) its operations have implemented the policy it is required to adopt under **paragraph (a)**; and
 - (ii) its contracts and funding arrangements have complied with **paragraph (d)**.

18 School boards to adopt and require child protection policies

Every school board must—

- (a) adopt, as soon as is practicable after the commencement (under **section 2(2) or (3)**) of this section, a child protection policy; and
- (b) ensure that a copy of the policy is available on the Internet site (if any) maintained by or on behalf of the board or is available on school premises if requested; and
- (c) ensure that every contract, or funding arrangement, that after that commencement the board enters into with an independent person requires the person as soon as is practicable to adopt (and to review in accordance with **paragraph (d)**) a child protection policy if, in the opinion of the board,—
 - (i) the person is or becomes a provider of children’s services; and
 - (ii) some or all of the contract or arrangement is about providing children’s services; and
- (d) review the policy within 3 years of the date of its first adoption, or of its most recent review, under this section.

19 Content of child protection policy

Every child protection policy required by this **Part** must—

- (a) apply to the provision of children’s services by the service, board, or independent person that adopts the policy; and

- (b) be written, and contain provisions (whether or not it contains provisions on any other matter or matters) on the identification and reporting of child abuse and neglect in accordance with section 15 of the Children, Young Persons, and Their Families Act 1989. 5

20 Effect of child protection policy

A child protection policy—

- (a) does not—
- (i) create legal rules; or
 - (ii) create any legal right enforceable in a court of law; or 10
 - (iii) affect or limit the way in which a chief executive or other person is required to exercise a statutory power of decision; or
 - (iv) affect the interpretation of any enactment or the operation of a rule of law; and 15
- (b) is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act. 20

Part 3

Children's worker safety checking

21 Purpose of this Part

The purpose of this **Part** is to reduce the risk of harm to children by requiring people employed or engaged in work that involves regular or overnight contact with children to be safety checked. 25

22 Application to Crown

- (1) A Crown organisation (as defined in the Crown Organisations (Criminal Liability) Act 2002) may be prosecuted for an offence against this **Part** only if— 30
- (a) the offence is alleged to have been committed by the Crown organisation; and
 - (b) the proceedings are commenced—

- (i) against the Crown organisation in its own name and the proceedings do not cite the Crown as defendant; and
 - (ii) in accordance with the Crown Organisations (Criminal Liability) Act 2002. 5
- (2) However, section 8(4) of the Crown Organisations (Criminal Liability) Act 2002 (which provides that a court may not sentence a Crown organisation to pay a fine in respect of certain offences) does not apply in respect of offences under this **Part**, and the reference in section 12 of that Act to reparation, compensation, or costs must be taken to include a reference to any fine imposed as a consequence of a prosecution for an offence under this **Part**. 10

23 Interpretation

- (1) In this **Part**, unless the context otherwise requires,— 15
- child** has the meaning given in **section 15**
- children’s worker** means a person who works in, or provides, a regulated service, and the person’s work—
- (a) may or does involve regular or overnight contact with a child or children (other than with children who are co-workers); and 20
 - (b) takes place without a parent or guardian of the child, or of each child, being present
- core worker** means a children’s worker whose work in or providing a regulated service requires or allows that, when the person is present with a child or children in the course of that work, the person— 25
- (a) is the only children’s worker present; or
 - (b) is the children’s worker who has primary responsibility for, or authority over, the child or children present 30
- key agency** means any of the following:
- (a) the Ministry of Social Development:
 - (b) the Ministry of Health:
 - (c) the Ministry of Education:
 - (d) the Ministry of Justice 35

- local authority** means a local authority, as defined in section 2(1) of the Local Government Official Information and Meetings Act 1987, to which Parts 1 to 6 of that Act apply
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this **Part** 5
- non-core worker** means a children’s worker who is not a core worker
- regulated service** means a service identified in **Schedule 1** 10
- safety checked**, in relation to a person at a particular time, means that a safety check that complies with **section 31** has been completed for the person within the previous 3 years
- screening service** means a person or organisation that carries out, on behalf of a specified organisation, all or any part of a safety check of children’s workers 15
- specified offence** means an offence identified in **Schedule 2**
- specified organisation** has the meaning given in **section 24**
- State services** has the meaning given in section 2 of the State Sector Act 1988 20
- work** means work that is—
- (a) paid work; or
 - (b) unpaid work that is undertaken as part of an educational or vocational training course.
- (2) A person’s work involves **regular or overnight contact** with children if— 25
- (a) the person has contact (other than merely incidental contact) with a child or children—
 - (i) overnight; or
 - (ii) at least once each week; or 30
 - (iii) on at least 4 days each month; and
 - (b) that contact is any of the following kinds:
 - (i) physical contact:
 - (ii) oral communication, whether in person or by telephone: 35
 - (iii) communication through any electronic medium, including by way of writing or visual images.

24 Specified organisation defined

- (1) In this **Part**, **specified organisation** means any of the following that employs or engages a children's worker to perform a regulated service:
- (a) any of the State services: 5
 - (b) an individual or organisation that is funded (whether wholly or partly and whether directly or indirectly) by a State service to provide regulated services:
 - (c) on and after the date that is 2 years after the date on which this **Part** comes into force (or any earlier date specified in regulations made under **section 33(1)(c)**),— 10
 - (i) local authorities; and
 - (ii) individuals and organisations that are funded (whether wholly or partly and whether directly 15 or indirectly) by a local authority to provide regulated services.
- (2) Despite **subsection (1)**, an individual or organisation is not a specified organisation if it is declared by regulations made under **section 33(1)(d)** not to be a specified organisation for the purposes of this **Part**. 20
- (3) Despite **subsection (1)**, the following are not specified organisations:
- (a) an individual (**person A**) who, in relation to a child (**child A**),— 25
 - (i) is a parent or guardian, or has the care, of child A; and
 - (ii) receives funding (directly or indirectly) from a specified organisation for the purpose of securing the provision of particular regulated services to child A: 30
 - (b) an organisation that does not (except as provided in **sub-paragraph (i) or (ii)**) receive funding, directly or indirectly, from a specified organisation to provide specified regulated services, but— 35
 - (i) is paid by person A to provide some or all of the particular regulated services to child A; or

- (ii) receives funding, pursuant to an entitlement of person A, to provide some or all of the particular regulated services to child A.

Obligations of specified organisations

- 25 Safety checks of new children’s workers** 5
- (1) A specified organisation must not employ or engage a person as a children’s worker without ensuring that a safety check of the person that complies with **section 31** is completed before the employment or engagement commences.
- (2) The obligation in **subsection (1)** applies,— 10
- (a) with respect to core workers, to employment or engagement that commences on or after the date on which this **Part** comes into force; and
- (b) with respect to non-core workers, to employment or engagement that commences on or after the date that is 1 15
year after the date on which this **Part** comes into force.
- (3) A specified organisation that, in relation to a person whom it employs or engages as a children’s worker, fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 20
- 26 Safety checks of existing children’s workers**
- (1) A specified organisation must, on or before the applicable date set out in **subsection (2)**, ensure that a safety check that complies with **section 31** is completed of every children’s worker who is employed or engaged by the organisation before that date and who it intends will still be employed or engaged by the organisation on that date. 25
- (2) The applicable dates are as follows:
- (a) in the case of a core worker, the date that is 3 years after the date on which this **Part** comes into force: 30
- (b) in the case of a non-core worker, the date that is 4 years after the date on which this **Part** comes into force.
- (3) However, a specified organisation need not comply with **subsection (1)** if the organisation is satisfied that a safety check of the person that complies with **section 31** was completed 35

within 3 years before the relevant date described in **subsection (2)**.

- (4) A specified organisation that, in relation to a children’s worker whom it continues to employ or engage, fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 5

27 Periodic safety checks of children’s workers

- (1) A specified organisation must ensure that each children’s worker whom it employs or engages is safety checked at intervals of no more than 3 years after the employer first conducts a safety check of the person under this **subpart** within 3 years after the date of the latest safety check of the person that complied with **section 31**. 10
- (2) A specified organisation that, in relation to a children’s worker whom it employs or engages, fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 15

28 Core worker convicted of specified offence not to be employed or engaged

- (1) This section applies to a person who— 20
 - (a) has been convicted of a specified offence; and
 - (b) does not hold an exemption granted under **section 34**.
- (2) On and after the date on which this **Part** comes into force, a specified organisation must not employ or engage a person to whom this section applies as a core worker. 25
- (3) On and after the date that is 1 year after the date on which this **Part** comes into force, a specified organisation must not continue to employ or engage a person to whom this section applies as a core worker, regardless of when that worker commenced employment or was engaged, except as provided in this section. 30
- (4) On and after the date referred to in **subsection (3)**, if a specified organisation believes that a worker whom it employs or engages is a person to whom this section applies, the organisation must immediately— 35

-
- (a) suspend the worker from all duties that require or enable him or her to act as a core worker; and
 - (b) specify the period of suspension, which must be not less than 5 working days (but may be extended from time to time); and 5
 - (c) tell the worker the reason for the suspension and the grounds for the organisation's belief; and
 - (d) advise the worker that he or she may respond to the information provided under **paragraph (c)**.
- (5) If a worker is suspended under **subsection (4)**, the employer must not terminate the worker's employment or engagement until at least 5 working days after the suspension begins (unless the person's employment or engagement is terminated sooner for reasons unrelated to that suspension). 10
- (5A) During the period of suspension, the employer must continue to pay the worker on whatever basis would apply to the worker had he or she been suspended on the grounds of serious misconduct. 15
- (5B) At the end of the period of suspension, the employer must terminate the worker's employment or engagement as a core worker if the employer believes on reasonable grounds that the person is a person to whom **subsection (1)** applies. 20
- (5C) If a worker's employment or engagement is terminated under **subsection (5B)**,—
- (a) no compensation or other payment is payable in respect of the termination, despite anything to the contrary in any contract or agreement; and 25
 - (b) the termination is deemed to be a justifiable dismissal for the purposes of Part 9 of the Employment Relations Act 2000. 30
- (6) A specified organisation that contravenes **subsection (2) or (3)**, knowing that, or being reckless as to whether, the person is a person to whom this section applies, commits an offence and is liable on conviction to a fine not exceeding \$50,000.
- (7) A specified organisation that contravenes **subsection (4), (5), (5A), or (5B)** commits an offence and is liable on conviction to a fine not exceeding \$50,000. 35

- (8) **Subsection (5C)(a)** does not limit or affect the Wages Protection Act 1983.

Defences

- 29 Defence of taking all reasonable steps** 5
It is a defence to a charge for an offence against any of **sections 25 to 27** that the specified organisation took all reasonable steps to ensure that a safety check of the person that complied with **section 31** was completed as required by the relevant section.
- 30 Defence relating to short-term emergencies** 10
It is a defence to a charge for an offence against **sections 25 to 28** that all the following conditions applied:
- (a) the specified organisation considered that an emergency had occurred, or unexpected conditions had arisen, that increased the risks to any children to whom it provides regulated services: 15
 - (b) in order to reduce the risks to those children, the organisation employed or engaged additional children's workers:
 - (c) any of those children's workers who were not safety checked were employed or engaged by the specified organisation for no more than 5 consecutive working days. 20

Safety checks

- 31 Requirements of safety checks** 25
- (1) Every safety check of a person must comply with the requirements for safety checks for core workers or for non-core workers (as appropriate) prescribed by this section and by regulations made under **section 32**.
 - (2) Every safety check of a person must include— 30
 - (a) confirmation of the identity of the person, carried out as prescribed by regulations made under **section 32**; and
 - (b) consideration of specific information prescribed by regulations made under **section 32**; and

- (c) a risk assessment, carried out as prescribed by regulations made under **section 32**, that assesses the risk the person would pose to the safety of children if employed or engaged as a children's worker.
- (3) Despite anything in the Criminal Records (Clean Slate) Act 2004, nothing in that Act authorises the concealment of a conviction for a specified offence of a person who is subject to a safety check in relation to employment or engagement as a core worker, even if the person is otherwise deemed to have no criminal record. 5 10

Regulations

- 32 Regulations prescribing requirements for safety checks**
- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements for safety checks, including the following: 15
- (a) prescribing the way or ways in which a person's identity must be confirmed:
- (b) prescribing the information that must be considered in the course of a safety check:
- (c) prescribing the manner in which a risk assessment must be carried out, and the content of a risk assessment: 20
- (d) providing that certain forms of checking undertaken by the licensing body of any specified profession or occupation may be treated as satisfying the requirement for safety checking, or for satisfying any 1 or more prescribed requirements for safety checking: 25
- (g) prescribing forms for use in safety checking:
- (h) providing for any other matter contemplated by or necessary for giving effect to the provisions of this Act that relate to the requirements for safety checking. 30
- (2) Regulations made under this section may provide that different requirements relating to safety checking do, or do not, apply to or in respect of different—
- (a) classes of children's worker; and
- (b) specified organisations or classes of specified organisation. 35

33 Other regulations

- (1) The Governor-General may, by Order in Council, make regulations for any of the following purposes:
- (a) amending (subject to **subsections (2) and (3) Schedule 1** by— 5
 - (i) adding any new regulated service; or
 - (ii) omitting any regulated service; or
 - (iii) correcting or updating the description of any regulated service:
 - (c) specifying a date (being a date earlier than 2 years after 10
the date on which this **Part** comes into force) on which local authorities, and the individuals and organisations referred to in **section 24(1)(c)**, become specified organisations:
 - (d) providing that individuals or organisations, or classes of 15
individuals or organisations, are not specified organisations (but *see* **subsection (4)**):
 - (e) prescribing the process, not inconsistent with this **Part**,
for applying for, granting, and revoking exemptions under **section 34**: 20
 - (f) prescribing the processes and requirements for approving screening services under **section 39**, and the process and grounds on which any approval may be suspended or cancelled:
 - (g) providing for any other matter contemplated by this 25
Part, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations may be made under **subsection (1)(a)(i)** only in accordance with a recommendation by the Minister that he or she is satisfied that the service proposed to be added to **Schedule 1** employs or engages, or is likely to employ or engage, children's workers and that the requirements of this **Part** relating to the checking of children's workers should apply. 30
- (3) Regulations may be made under **subsection (1)(a)(ii)** only in accordance with a recommendation by the Minister that he or she is satisfied that omitting the regulated service from **Schedule 1** will not result in undue risk to the safety of children. 35
- (4) Regulations may be made under **subsection (1)(d)** only in accordance with a recommendation by the Minister that he or she

is satisfied that providing that individuals or organisations, or classes of individuals or organisations, identified in the regulations are not specified organisations will not result in undue risk to the safety of children.

- 33A Transitional provision relating to local authorities, etc** 5
- (1) In this section,—
- original specified organisation** means an organisation referred to in **section 24(1)(a) or (b)** (being an organisation that is a specified organisation on the date on which this section comes into force) 10
- later specified organisation** means an organisation that becomes a specified organisation at any time after this section comes into force.
- (2) In order to enable the obligations in **sections 25, 26, and 28** to apply to a later specified organisation in the same, staggered, way that those sections apply to original specified organisations, references in those sections to the date on which this **Part** comes into force must be treated as references to the date on which the organisation became a later specified organisation. 20
- Exemption for workers convicted of specified offence*
- 34 Exemption for certain individuals**
- (1) The chief executive of any key agency may grant an exemption under this section to a person who has been convicted of a specified offence. 25
- (2) An exemption may be granted only if the chief executive is satisfied that the person would not pose an undue risk to the safety of children if employed or engaged as a core worker.
- (3) An exemption may be qualified or contain conditions. 30
- 35 Application for exemption**
- (1) An application for an exemption must be made by way of a statutory declaration signed by the person to whom it relates and set out the following:
- (a) the person's full name and contact details: 35

- (b) in respect of each specified offence of which the person has been convicted—
 - (i) a description of the offence (eg, sexual violation under section 128B of the Crimes Act 1961); and
 - (ii) the date of conviction; and 5
 - (iii) any sentence imposed; and
 - (iv) the sentence expiry date (if any):
- (c) whether the person is subject to any conditions imposed under the Parole Act 2002 or the Criminal Justice Act 1985: 10
- (d) any other information prescribed by regulations made under **section 33**:
- (e) any other information the applicant wishes to place before the chief executive to whom the application is sent.
- (2) A chief executive who receives an application may, with the agreement of the chief executive of a different key agency, refer the application to that other chief executive for decision. 15
- (3) Before making a decision on an application, a chief executive must confirm—
 - (a) whether the person has previously applied for an exemption, and the outcome of that application; and 20
 - (b) whether the person has ever had an exemption revoked.

36 Revocation of exemption

- (1) The chief executive of the key agency that granted an exemption may revoke it at any time without notice. 25
- (2) A chief executive may revoke an exemption only if the chief executive—
 - (a) becomes aware that the person has been charged with, or convicted of, a specified offence; or
 - (b) is satisfied on reasonable grounds that the person would pose an undue risk to the safety of children if employed or engaged as a core worker. 30

37 Appeal against decision not to grant, or to revoke, exemption

A person whose application for an exemption has been declined, and a person whose exemption has been revoked, may 35

appeal to the High Court against the decision not to grant the application, or to revoke it, as appropriate.

Monitoring compliance

38 Requirement to provide information to chief executives

- (1) The chief executive of any key agency may, for the purpose of monitoring compliance with this **Part**, require any specified organisation to provide to the chief executive, in the manner and within the time specified, information about the safety checking of children’s workers employed or engaged by the organisation. 5 10
- (2) The chief executive of any key agency may exercise the power in **subsection (3)** only if he or she believes on reasonable grounds that the information required is necessary to prevent or lessen a serious threat to the safety of any child or children.
- (3) The chief executive may require any specified organisation to provide details to the chief executive of any safety check done on a named person and the person’s work history, including— 15
- (a) how the person’s identity was confirmed; and
 - (b) all information provided about the person in the course of the safety check; and 20
 - (c) the risk assessment of the person; and
 - (d) the date or dates on which the person has been employed or engaged by the organisation and the nature of the work that he or she is or has been engaged in.

Miscellaneous

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39 Approval of screening services

- (1) The chief executive of any key agency may approve a screening service to carry out specified aspects of safety checks.
- (2) Every approval— 30
- (a) must specify the aspects of a safety check that the screening service is approved to provide; and
 - (b) may specify which specified organisations, and which kind of children’s worker, the screening services may be used in relation to.
- (3) If regulations are made under **section 33(1)(f)**, approval of a screening service may be given, and may be suspended or can- 35

celled, only in accordance with the processes, requirements, and grounds set out in those regulations.

- (4) Notice of every approval, and of every suspension or cancellation, must be given in the *Gazette*.

40 Prosecution of offences 5

- (1) A charging document for an offence against any provision of this **Part** may be filed by the chief executive of any key agency other than the Ministry of Justice.
- (2) However, a chief executive may not file a charging document in respect of a specified organisation that is the key agency of which he or she is the chief executive. 10

Consequential amendments to other enactments

41 Amendments to Crown Organisations (Criminal Liability) Act 2002

- (1) This section amends the Crown Organisations (Criminal Liability) Act 2002. 15
- (2) After section 6(1)(d), insert:
“(e) an offence against **Part 3 of the Vulnerable Children Act 2013**.”
- (3) In section 7(a), replace “or the Resource Management Act 1991” with “the Resource Management Act 1991, or **Part 3 of the Vulnerable Children Act 2013**”. 20

42 Amendment to Sentencing Act 2002

- (1) This section amends the Sentencing Act 2002.
- (2) In section 4(4), replace “or the Resource Management Act 1991,” with “the Resource Management Act 1991, or **Part 3 of the Vulnerable Children Act 2013**,”. 25

43 Amendment to Criminal Records (Clean Slate) Act 2004

- (1) This section amends the Criminal Records (Clean Slate) Act 2004. 30

- (2) In section 6(1), after “The clean slate scheme applies”, insert “(except as provided in **section 31(3) of the Vulnerable Children Act 2013**)”.

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Schedule 1

Regulated services

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

- Welfare, support, and justice services*
- (1) services provided (including the performance or exercise of functions and powers) under the Children, Young Persons, and Their Families Act 1989 by the department responsible for the administration of that Act, or by any care and protection co-ordinator or youth justice co-ordinator: 5
 - (2) services provided at, or in relation to the operation of, any residence within the meaning of section 2(1) or 364 of the Children, Young Persons, and Their Families Act 1989 (excluding, for the avoidance of doubt, services provided by an individual with whom a child is placed under section 362 of that Act): 10
 - (3) services provided by any person, organisation, or body approved under section 396 or 403 of the Children, Young Persons, and Their Families Act 1989: 15
 - (4) services provided (including the performance or exercise of functions and powers) under any order, direction, or recommendation of a court made under the Children, Young Persons, and Their Families Act 1989, the Care of Children Act 2004, or the Adoption Act 1955 by— 20
 - (i) the department responsible for the administration of the Children, Young Persons, and Their Families Act 1989; 25
 - or
 - (ii) any other person, organisation, or body:
 - (5) services provided by any person, body, or organisation pursuant to any decision, recommendation, or plan made by a family group conference under the Children, Young Persons, and Their Families Act 1989: 30
 - (6) services provided at prisons, secured facilities, and children's health camps:
 - (7) services provided as part of a condition of bail made under the Bail Act 2000:
 - (8) services and facilities of the kind referred to in sections 4(a) and 7(2)(b)(i) of the Children, Young Persons, and Their Families Act 1989: 35

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- (9) social or support services, including (but not limited to) victim support services, drug and alcohol rehabilitation services, and childcare services:
- (10) mentoring and counselling services:
- (11) youth services and youth work: 5
- (12) participating in a telephone communication service that is likely to be used wholly or mainly by children:
- (13) moderating an electronic interactive communication service that is likely to be used wholly or mainly by children (but a person does not moderate a public electronic interactive communication service unless he or she has access to the content of the matter or contact with users of the service): 10
- (14) services provided to escort, track, or transport children for the purposes of the Children, Young Persons, and Their Families Act 1989: 15
- (15) out-of-school care and recreational services:
- Health services*
- (16) services provided at a public hospital:
- (17) services provided at a publicly funded medical practice or facility, including blood and cancer centres, treatment centres, outreach clinics, and mental health services: 20
- (18) services provided through medical practices belonging to primary health organisations (PHOs):
- (19) services provided by health practitioners:
- (20) Well Child Tamariki Ora (WCTO) services (eg, Plunket): 25
- (21) home-based disability support services:
- (22) residential disability support services:
- (23) ambulance services:
- (24) maternity services, including lead maternity carers and midwives: 30
- Education services*
- (25) education services provided at a registered school (as defined in section 2(1) of the Education Act 1989):
- (26) early childhood services (as defined in section 309 of the Education Act 1989): 35
- (27) education services provided by a trades academy, a service academy, or an alternative education provider for or on behalf of a school:

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- (28) education services provided at any off-site location for or on behalf of a registered school or early childhood service, including teen parent units, school camps, and learning centres:
 - (29) services provided to ensure enrolment and attendance at school in accordance with sections 20 and 25 of the Education Act 1989: 5
 - (30) services provided at a playgroup (as defined in section 309 of the Education Act 1989):
 - (31) services provided at any location on behalf of a limited child care centre (as defined in section 2(1) of the Health and Safety in Employment Act 1992): 10
 - Transport services*
 - (32) work driving a vehicle that is being used only for the purpose of conveying children and any persons supervising or caring for the children (for instance, school bus services): 15
 - Policing services*
 - (33) specialist child and family policing services provided by Police employees (as defined in section 4 of the Policing Act 2008).
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Schedule 2

Specified offences

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- 1 An offence against any of the following sections of the Crimes Act 1961 is a specified offence for the purpose of **Part 3**:
- (aa) section 98 (dealing in slaves): 5
 - (aab) section 98AA (dealing in people under 18 for sexual exploitation):
 - (a) section 128B (sexual violation):
 - (b) section 129 (attempted sexual violation and assault with intent to commit sexual violation): 10
 - (c) section 129A (sexual conduct with consent induced by certain threats):
 - (d) section 130 (incest):
 - (e) section 131 (sexual conduct with dependent family member): 15
 - (f) section 131B (meeting young person following sexual grooming, etc):
 - (g) section 132 (sexual conduct with child under 12):
 - (ga) section 133 (indecenty with girl under 12):
 - (h) section 134 (sexual conduct with young person under 16): 20
 - (i) section 135 (indecent assault):
 - (j) section 138 (sexual exploitation of person with significant impairment):
 - (ja) section 139 (indecent act between woman and girl): 25
 - (jb) section 140 (indecenty with boy under 12):
 - (jc) section 140A (indecenty with boy between 12 and 16):
 - (jd) section 141 (indecent assault on man or boy):
 - (je) section 142A (compelling indecent act with animal):
 - (jf) section 143 (bestiality): 30
 - (k) section 144A (sexual conduct with children and young people outside New Zealand):
 - (l) section 144C (organising or promoting child sex tours):
 - (m) section 154 (abandoning child under 6):
 - (oa) section 172 (punishment of murder): 35
 - (p) section 173 (attempt to murder):
 - (pa) section 177 (punishment of manslaughter):
 - (q) section 178 (infanticide):
 - (qa) section 182 (killing of unborn child):

- (r) section 188 (wounding with intent):
 - (s) section 189(1) (injuring with intent to cause grievous bodily harm):
 - (t) section 191 (aggravated wounding or injury):
 - (u) section 194 (assault on child): 5
 - (v) section 195 (ill-treatment or neglect of child or vulnerable adult):
 - (w) section 195A (failure to protect child or vulnerable adult):
 - (x) section 198 (discharging firearm or doing dangerous act with intent): 10
 - (xa) section 204A (female genital mutilation):
 - (xb) section 204B (further offences relating to female genital mutilation):
 - (y) section 208 (abduction for purposes of marriage or sexual connection): 15
 - (ya) section 209 (kidnapping):
 - (z) section 210 (abduction of young person under 16).
- 2 An offence that is equivalent to an offence against any section of the Crimes Act 1961 referred to in **subclause (1)**, but that was committed against a provision of the Crimes Act 1961 that has been repealed, is a specified offence. 20
- 3 An attempt to commit any offence referred to in **subclause (1) or (2)**, where the offence is not itself specified as an attempt and the provision does not itself provide that the offence may be completed on an attempt, is a specified offence. 25
- 4 A conspiracy to commit any offence referred to in **subclause (1) or (2)** is a specified offence.
- 5 An offence against any of the following sections of the Films, Videos, and Publications Classifications Act 1993 is a specified offence for the purpose of **Part 3**: 30
- (a) section 124 (offences relating to objectionable publications, involving knowledge):
 - (b) section 127(4) (exhibition to persons under 18):
 - (c) section 131A (offences relating to possession of objectionable publications, involving knowledge). 35

Vulnerable Children Bill

- 6 An offence against section 209(1A) of the Customs and Excise Act 1996 is a specified offence for the purpose of **Part 3**.

Legislative history

2 September 2013	Introduction (Bill 150–1)
17 September 2013	First reading and referral to Social Services Committee
25 March 2014	Reported from Social Services Committee (Bill 150–2)
15 April 2014	Second reading
17 June 2014	Committee of the whole House
