The Royal New Zealand
College of General Practitioners

29 October 2014 Our ref: HMB137-14

Ms Caroline Flora
Consultation on Regulations for Worker Safety Checks
DHB Performance
National Health Board Business Unit
Ministry of Health

Dear Ms Flora

Regulations for Worker Safety Checks

A colleague in the sector recently forwarded the Royal New Zealand College of General Practitioners (the College) a copy of your consultation paper on *Worker safety checks.* The consultation paper states that the Ministry is "seeking feedback from DHBs" on the proposed Regulations for worker safety checks required by the Vulnerable Children Act 2014 (the Act). It is important to note that DHBs are not the only employers of health practitioners in New Zealand, and that there are a multitude of employment arrangements in the health sector – and in particular in primary care. The purpose of this letter is to discuss the implications of your proposals for primary care, and to raise concerns about the likely effectiveness, risks and costs of screening.

Introductory comments

The College supports the intent of the Act, which aims to protect and improve the wellbeing of vulnerable children. We also support those parts of the Act which emphasise shared responsibility and coordinated and collaborative action across the Government and social services to better protect vulnerable children. Our view is that in these areas the Act has the potential to improve systems to protect vulnerable children who have been maltreated. However, as outlined in our submission to the Select Committee on 29 October 2013, we have significant concern about those parts of the Act that relate to worker safety checking. As noted in our earlier submission:

- The Regulatory Impact Statement accompanying the Bill acknowledged that there is a lack of evidence on the extent to which unsafe individuals gain access to children through roles in the children's workforce.
- The College is not aware of any cases where a New Zealand general practitioner has abused a child in the course of their work.
- The Health Practitioners Competence Assurance Act 2003 already provides a framework for protecting members of the public from health practitioners who present a risk of harm. In the case of medicine, the responsible authority is the Medical Council of New Zealand.
- The responsibility to undertake safety checks under the Act lies with employers. However, employment arrangements in the primary care sector can often be complex.

Level 3, 88 The Terrace, Wellington 6011, PO Box 10440, Wellington, 6143 New Zealand
Tel: +64 4 496 5999, Fax: +64 4 496 5997
Email: rnzcgp@rnzcgp.org.nz, Web: www.rnzcgp.org.nz

The proposed elements of the new standard safety check

Your paper states that good practice for safety checking should involve five key components:

- Identity verification
- Police vetting
- Reference and good character checking
- An interview component
- A risk assessment component.

Our view is that these requirements will: provide little or no additional protection for child safety; create significant risks for both employers and health practitioners; and impose unnecessary costs on health services.

The perceived benefits of child safety checking

As noted in our earlier submission: the Ministry has provided no evidence that health practitioners present a risk of harm to vulnerable children while in the workplace; and we are not aware of any cases where a general practitioner has abused children in New Zealand in the course of their work. We also advised that mechanisms to protect public safety from unsafe practitioners are already provided by means of the Health Practitioners Competence Assurance Act 2003.

In the College's view, no additional child safety requirement should be introduced unless there is a clearly identified risk of harm and evidence to indicate that the requirement will be effective in identifying unsafe practitioners and addressing that risk of harm.

The College believes that at least four of the proposed components of safety checking will provide little or no additional protection from harm even should an unsafe person seek employment as a health practitioner. In particular we cannot perceive how an unsafe person without criminal convictions could effectively be detected by means of identity verification; reference and character checks; an interview conducted by a person who has not received any formal training in identifying predatory attitudes and behaviours; or a undefined requirement that employers "turn their mind to relevant considerations, and turn their mind to use the information they have obtained, while emphasising the need for professional judgement."

In our view, the only aspect of your proposed child safety regime which could possibly have any value in identifying potential risk is the proposal that all health practitioners undergo a regular Police check. We note that in a report on the introduction of mandatory Police checks for health practitioners in Australia it was found that 52,445 criminal records checks in 2010/11 resulted in action being taken in 40 cases (1 application for registration was refused, 6 were withdrawn, and 33 conditions or undertakings were imposed).

However, Police checks are costly (the cost of conducting health practitioner criminal records checks in Australia during 2010/11 was over AU$2.2 million), and in our view requiring employers to conduct this check at the time of employment may be redundant given that: responsible authorities are already required to ensure that a health practitioner is "fit to practise" under the Health Practitioners Competence Assurance Act 2003[1]; and many responsible authorities already conduct Police checks as part of this process.

---

[1] Before registration is granted by the Medical Council of New Zealand, a doctor must make a statutory declaration about any criminal convictions and provide a "Certificate of Good Standing" (CGS) from the responsible body in countries or jurisdictions where they have practised. The CGS certifies that the practitioner has not been subject to disciplinary findings or criminal convictions. The Medical Council also confirms the identity of the applicant via identity documentation (such as a passport and

At face value, periodic Police checks for health practitioners who remain in employment would appear to have some utility in terms of identifying health practitioners who commit an offence after they have obtained registration to practise. However, it does need to be noted that the Health Practitioners Competence Assurance Act already requires the courts to notify the relevant responsible authority when a registered health practitioner is convicted of an offence. We also understand that the current Police Commissioner has taken a pro-active stance and is requiring Police to notify the relevant responsible authority on arrest, rather than on conviction. We would also expect that if a conviction was made against a practitioner then the Courts would make an appropriate order relating to their contact with children. It therefore does not appear that a periodic Police check would provide any protection above and beyond that already provided for.

We also note that a significant proportion of the health workforce comprises practitioners who trained in another country. In primary care, international medical graduates make up around 42% of the workforce. In such cases vetting by New Zealand Police may not identify all criminal convictions, and may actually provide a false assurance of safety. It is also important to note that obtaining a copy of an accurate criminal record from another country can often be time-consuming and highly problematic.

A further issue is that employment arrangements in primary care are diverse and often complex. The results of our 2014 workforce survey indicate that around 22% of general practitioners are practice owners, 17% are practice partners, 46% are long-term employees or contractors and 9% are on short-term contracts. It is not clear whether the Act's requirements apply to the 39% of general practitioners who are either practice owners or practice partners. If not, and there is a genuine risk of harm, then there will be significant holes in the safety net designed to meet that risk of harm. Further advice on this issue is required.

The risks of child safety checking

In our view, if an employer were to develop concerns as a result of your proposed character interview checks then they would run considerable risk by acting on those concerns.

It is important to note that there is no advice provided to employers in either the Act or your proposed policy about what action an employer should take in the event that a child safety screening process identifies a concern. In particular:

- What are the legal implications should an employer attempt to withdraw an offer of employment on the basis of unsubstantiated concerns about a practitioner's safety?
- Is a health practitioner entitled to respond to the concerns raised?
- If the concerns turn out to be false, what redress does the health practitioner have?
- What happens to the information collected by the employer as part of this process? How will this be shared with other employers and authorities? What rights does a practitioner have to have this information amended or rescinded in the event that it is disputed?

The College has concerns that in addition to providing little assurance of safety, the proposed child safety checks may result in good practitioners having their reputations damaged because of a mistaken employer. This risk is heightened by the fact that an employer who fails to conduct an adequate safety check commits an offence under the Act. This may create an environment where employers feel compelled to act out of fear of prosecution, even where their basis for action is insubstantial.

---

certification of a change of name), and original documentation must be supplied in a face-to-face interview once the applicant reaches New Zealand.

The costs of child safety checking

Requiring employers to conduct child safety checks in accordance with your requirements will impose new costs on primary care. These costs are likely to be more substantial in rural areas because of that sector's greater reliance on short-term locums.

We also note that your paper proposes that employers conduct all aspects of a child safety check, presumably even when those checks have already been conducted by a responsible authority (such as the Medical or Nursing Council). This duplication seems unnecessary and wasteful.

Many primary care provider organisations employ very few staff and do not currently have the capacity or facility to conduct child safety checks. In these organisations employment of doctors is often conducted through a contract with a recruitment agent, rather than by the employer. It is not clear whether an employer would need to conduct identity verification; Police vetting; reference and good character checking; an interview; and a risk assessment, or whether it would be acceptable for them to rely on a process undertaken by a recruitment agent.

Whether an employer or a recruitment agent conducts the screening, it will be the health service that will bear the cost. Additional funding will be required to allow general practice to meet your requirements. Alternatively, practices will need to increase charges to patients to meet these new costs.

It is also important to note that the new child safety checking requirements will have an adverse impact on the time it takes to employ practitioners, even where that practitioner is only being employed on a very short-term basis (for example, to provide locum cover while a general practitioner takes a holiday). New Zealand Police currently advise that their service level agreement requires them to provide the results of a vetting process within 30 days of the request being submitted. Employment of practitioners may therefore be delayed by up to a month by means of this single addition to the employment process. Obtaining a clearance from authorities in another country may take significantly longer. Requiring employers to: verify information at source; conduct a reference and background check; conduct an interview; and complete a risk assessment process may result in additional delays. Such delays will have a significant impact on the ability of general practice to be responsive to sudden changes (such as the unexpected illness of a general practitioner) and on the ability of practitioners to arrange cover for planned leave.

The College as an employer of doctors

The College is a major employer of doctors in New Zealand. In their first training year GP trainees are employed by the College, but work in supervised learning positions within general practices throughout New Zealand. These doctors are only employed by the College during that single training year. In 2015 the College will be employing 155 doctors in this way, and numbers will increase to over 200 by 2017, and almost 250 by 2019.

The College currently conducts an interview with applicants and requires them to provide a Certificate of Good Standing from the Medical Council to ensure that there is no legal barrier – on disciplinary, competence, criminal, or health grounds – to the doctor's registration to practice in New Zealand.

If the College is required to also conduct identity verification, Police checks, child safety interviews and a child safety risk assessment for over 200 doctors every year then that is going to result in significant additional expense. In particular, the College would need to: expand its internal administrative capacity in order to undertake paper-based processing of screening information; and ensure that all potential interviewers receive training in the use of procedural interviewing and risk assessment tools to allow them to identify signs of predatory attitudes/behaviour. The College currently employs approximately 30 medical educators and clinical leads through-out the country as

interviewers. Turn-over is high for these positions, so we would anticipate that any training would need to be provided on an annual basis. The current cost of general interview training is around $600 to $800 per person, and we would anticipate similar costs for risk assessment interview training. The College would also need to compensate doctors for transport, accommodation and time spent away from clinical practice.

The training programme, and the costs of employing doctors, is currently fully funded by Health Workforce New Zealand. That funding arrangement will therefore need to be reviewed, and the Ministry will need to allocate additional funding to Health Workforce New Zealand and the College to meet these new costs.

Summary

The College submits that:

- We support those parts of the Act which emphasise shared responsibility and coordinated and collaborative action across the Government and social services to better protect vulnerable children. Our view is that in these areas the Act has the potential to improve systems to protect vulnerable children who have been maltreated.
- Child safety checking of health practitioners who are regulated under the Health Practitioners Competence Assurance Act 2003 is already adequately addressed through the requirements of that Act and through the processes already undertaken by responsible authorities such as the Medical Council.
- New child safety checking requirements beyond those already provided through the Health Practitioners Competence Assurance Act 2003 should only be introduced if there is evidence that there is a risk of harm and that these new requirements will be effective in detecting unsafe health practitioners and addressing that risk of harm.
- The additional child safety checking requirements proposed by the Ministry will: provide little or no additional protection for child safety; create significant risks for both employers and health practitioners; and impose additional costs on the health sector.

We also strongly encourage the Ministry to be more proactive in seeking input from the College on matters that will have a significant impact on general practice, and asks that we be included in any future consultations on this subject.

If you would like any further information or clarification, please do not hesitate to contact the College's policy team at policy@rnzcgp.org.nz.

Yours sincerely

Helen Morgan-Banda
Chief Executive

CC: Mr Philip Pigou, CEO, Medical of New Zealand
Mr Hayden Wano, Interim Chair, National Health Board
Ms Lesley Clarke, CEO, New Zealand Medical Association
Mr Graeme Benny, CEO, Health Workforce New Zealand