The Royal New Zealand
College of General Practitioners

8 May 2015 Our Ref: JMK164-15

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Dear Ms Bruorton

The Royal New Zealand College of General Practitioners (the College) has recently become aware that you are seeking urgent feedback on the proposed Regulations for worker safety checks under the Vulnerable Children Act 2014.

The College would like to make some comments on those Regulations, and the accompanying Guidelines – but first we want to raise serious concerns about the lack of consultation around this issue.

Introduction to general practice and the College

General practice is the specialty that treats patients: with the widest variety of conditions; with the greatest range of severity (from minor to terminal); from the earliest presentation to the end; and with the most inseparable intertwining of the biomedical and the psychosocial. General practitioners (GPs) treat patients of all ages, from neonates to elderly, across the course of their lives.

The Royal New Zealand College of General Practitioners is the largest medical College in the country. There are around 4000 practising GPs who are members of fellows of the College, and this group comprise almost 40 percent of New Zealand's specialist workforce. The College provides training and ongoing professional development for general GPs and rural hospital generalists, and sets standards for general practice. The College is committed to achieving health equity in New Zealand.

Lack of consultation with general practice

As far as the College is aware there has been no proper or meaningful consultation with general practice on the subject of worker safety checks. In late 2014 the Ministry of Health undertook a "targeted" consultation with some sector organisations. As you are aware, the College only became aware of this consultation because it was provided a copy of your consultation document by General Practice New Zealand (GPNZ). As far as we are aware, GPNZ was the only primary care sector body that was formally approached in late-2014 for an opinion on the proposed checks. Similarly, it appears obvious from recent email correspondence that the Ministry did not intend to consult the College on this most recent occasion either.

It is important to note that GPNZ is a small organisation that was established with a very specific focus – to support the establishment of "primary care networks". Although it has been very successful, and around half of Primary Health Organisations (PHOs) now belong, GPNZ is not a body that represents the sector. It is also important to note that GPNZ's work in supporting primary care networks is with PHOs, rather than with practices. PHOs do not usually provide health services or employ or engage health practitioners except in some very limited circumstances (such as where they have appointed a medical director). Service provision, employment and engagement instead usually occur at the practice level.

Proposals that impact on general practice should be subject to proper and meaningful consultation with the sector – and that means with GPs, practices, PHOs, the College, and other key sector agencies such as the Rural General Practice Network.

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Timeframes

On the two separate occasions that the Ministry has undertaken a "targeted" consultation the timeframes provided have been insufficient to allow for meaningful or proper engagement. On this most recent occasion an email was sent at 2.23pm on 5 May 2015 requiring a response by 8 May 2015. It is important to note that, this three day window is – as far as we are aware – the first and only time that the draft Regulations have been made available for comment.

This timeframe means that the College is unable to seek input from general practice, and its response therefore cannot be regarded as either fully comprehensive or representative.

Risk to the Ministry of Health and Government

The lack of meaningful and proper consultation presents a genuine risk to the Ministry of Health and to Government. The Regulations and Guidelines will have a significant and pervasive impact on general practice, and yet it appears that there has only very minimal engagement with sector organisations and no engagement with practices at all. This appears likely to result in the introduction of a new legislative instrument that: does not reflect the requirements of the sector; is not fit for purpose; is ambiguous and confusing; and creates legal risks for primary care.

Remedying the situation

In our view, the only proper course of action is for the implementation of the Regulations and the Guidelines to be delayed until there has been meaningful and proper engagement with the primary care sector that incorporates direct engagement with general practice and with relevant sector organisations.

General comments

As noted in the College's submission of 29 October 2014 the College supports the intent of the Vulnerable Children Act 2014, 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 services to protect vulnerable children who have been maltreated. However, as outlined in that previous submission, we have significant concern about those parts of the Act that relate to worker safety checking.

To reiterate the key concerns outlined in our submission of 29 October 2014:

- 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.
- It is not clear whether the Act's requirements apply to those general practitioners who are either practice owners or practice partners. If it does not apply to this group, 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. If it does apply to this group then reliance on an employer-based system is unlikely to provide any meaningful assurance of safety.

The proposed Regulations and Guidelines provided earlier this week do not allay those concerns.

It is clear from the drafting that the Regulations and Guidelines are intended to provide for screening in large, centralised organisations – such as the Ministry of Education, District Health Boards and Police. It is not appear that consideration has been given to how the Regulations will be meaningfully and consistently implemented in primary care, where service delivery is often provided by small businesses operating in constrained circumstances.

Application to self-employed and company or trust structures

We are particularly concerned that it is still not clear to what extent the Regulations will apply to general practice. This is not made clear either in the primary legislation, the draft Regulations or the proposed Guidelines. In particular, it is not clear how legislation which requires employers to screen employees applies in an environment where GPs can be: self-employed; practice partners; or directors of the company or trust that employs them. The relevant section of the Guidelines (on pages 17-18 of the draft) are particularly opaque, but appear to put some responsibility for screening on PHOs. This demonstrates a lack of understanding of how practitioners are engaged or employed in primary care. PHOs do not usually provide health services or engage or employ practitioners, except in some limited cases – such as where they have appointed a medical director. Employment and engagement instead occurs at the practice level. As such, a PHO will not usually fit the definition of the "specified organisation" for most practitioners employed in primary care.

It is very concerning that a legislative instrument aimed at regulating health practitioners could be introduced when those introducing the Regulations apparently have no understanding of how they might be applied to around 40% of the medical workforce – and what the unintended consequences of their application might be in primary care.

Application to locums and IMGs

We are also concerned about how the Regulations might apply to locums and international medical graduates (IMGs). The Regulations require that a New Zealand Police vet is completed before an employee starts work, and the Guidelines state that the results of an overseas Police check should be obtained before clearance to start work is granted to an IMG. A New Zealand Police check can take 20 working days – and the Guidelines indicate that they may take even longer if there is significant demand. In such circumstances, how is a small practice expected to employ a short-term locum because a GP unexpectedly falls ill, has a family emergency, or suffers an injury? It is also important to note that IMGs make up over 40% of the medical workforce in New Zealand. Between 50-60% of these IMGs remain in the country for less than one year, and often these are locums filling a short-term workforce need. The use of locums is particular prevalent in rural general practice where the workforce is stretched the thinnest. Seeking Police certificates from overseas jurisdictions can often take significantly more than 20 working days – and very often months or even years in the case of developing nations. The impact of this expectation on the workforce is therefore likely to be significant and to present a risk of harm to patients through a reduction in access to services.

Lack of information on process where potential risk is identified

We are also concerned that the Regulations and Guidelines pay little attention to what should occur should screening identify concerns about an employee's conduct around children. The fundamental point of screening is to identify risk so that it can be managed – and yet there is very little guidance on managing risk. The Guidelines state that a "decision to follow-up a concern about a person you have safety checked should be made in consultation with Child, Youth and Family and the Police", but there is no indication about the point where intervention should occur and what the employer and employees legal rights are in this situation. Employers are required to conduct an interview of potential employees. If an employer feels that a potential employee is evasive when answering questions about children, are they expected to notify Police? Legally, are they able to withdraw an offer of employment and offer the role to a lesser qualified applicant? What right does the employee have to respond to the concerns and present their side of the story? How is the information recorded? Can that information be shared with other potential employers? These are fundamental questions that must be addressed before employers can be expected to comply with the Regulations.

Undue burden on general practice

The College is also concerned that some of the Regulations will impose a burden on general practice, without providing any additional assurance of safety. An example in point is Regulation 10(1). This Regulation requires that every 3 years a health practitioner "must confirm his or her identity [to an employer] by producing the original of a current secondary identity document". In almost every case in general practice the employer and employee will be working in close proximity for extended periods of time. Asking a GP to regularly check the identity of the practice nurse who has worked alongside him for 20 years is overly pedantic, meaningless and will provide no assurance of child safety. Although such a requirement is unlikely to create a major administrative burden in the majority of cases, it will require some time away from other duties – and where a health practitioner does not

regularly carry a valid identity document (for example, because they do not drive) the administrative burden may be notable.

Proper and meaningful consultation with general practice is needed to identify how other requirements will impact on the primary health care sector.

Impact on child access to services

One possible unintended consequence of the imposition of these Regulations may be that practices or practitioners will decline to provide services to unaccompanied children. Most GPs will only rarely see unaccompanied children, and therefore withdrawing these services altogether may be seen as a relatively simple step to avoid cumbersome regulatory requirements. An even more likely scenario is that locums and IMGs will have to be employed in hard-to-staff areas on an "adult patient only" basis, simply because completing a child safety check is either impractical (in the case of obtaining information about overseas criminal convictions) – or because it cannot be completed in the time required (in any case which involves a short-notice appointment and a Police check). This is likely to create significant risk for children, particular in the 14-16 year-old age bracket where children may wish to speak to a GP in the absence of an adult to obtain sexual health advice or services.

The Guidelines

We are also concerned that the Guidelines are not written in plain English, but are instead full of jargon and legal terms. These guidelines need to be rewritten with small business owners in mind. Concerns about the language, and about other expectations outlined only in the Guidelines, have been highlighted in the attached Appendix. The section on *Responsibility for safety checking contractors and the self-employed* is one part of the document that staff found particularly dense, impenetrable and unhelpful.

I hope that these comments are of assistance to you. If you have any questions or comments, please do not hesitate to contact the College's policy team (policy@rnzcgp.org.nz).

Yours sincerely,

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CC: Mr Hayden Wano, Interim Chair, National Health Board