

Vulnerable Children Act 2014

from 'Guidelines for Compliance in Universities', Universities NZ, 2015

The Act relates to departments, units or schools or individuals at University who are providing regulated services to those who are 17 or under, or are completing practicums with children aged 17 or under, where a parent or guardian is not present.

When students of universities or other tertiary providers are placed into specified organisations such as hospitals, medical practices, and education settings they may qualify as children's workers in terms of the Act.

The VCA applies to children's workers providing a regulated service in a specified organisation. A children's worker is one:

- Whose work may or does involve regular or overnight contact with a child or children; and
- This takes place without a parent or guardian of the child, or of each child, being present.

"Regular" is defined as at least once each week or on at least 4 days each month.

"Contact" is physical contact, oral communication (whether in person or by telephone), or communication through any electronic medium, including by way of writing or visual images.

"Regulated services" include services provided at a public hospital, a publicly funded medical practice or through medical practices belonging to primary health organisations (PHOs); education services provided at a registered school, early childhood services, education services provided off-site on behalf of a school or early childhood service, services provided at a playgroup.

The second bullet point above is important, and it provides a way for organisations to deal with equivocal situations, by requiring that a parent or guardian is present.

Timelines

The requirements of the Act for safety checks come into effect as a staged process as follows:

July 1, 2015: new, core children's workers;

July 1, 2016: new, non-core children's workers;

July 1, 2018: existing, core children's workers;

July 1, 2019: existing, non-core children's workers.

Most undergraduate health students whose contact with children is sufficient to qualify them as children's workers would be expected to be non-core. Risk assessments only need to be in place when they are functioning as children's workers providing a regulated service in a specified organisation, which may be for only part of their programme of study. Therefore, the optimal timing of risk assessment needs to be determined for each course, but should be completed well in advance of any practicum placement so that the placement is not placed in jeopardy by delays in any part of the process. Existing students of a university should be regarded as new children's workers when

they move to a new specified organisation (e.g. from one school to another). Therefore, the 2016 date will apply to most.

Research

It is our view that research carried out within universities is not covered by the Act, since research is not a regulated service. The situation may be less clear-cut in relation to research carried out within a healthcare environment or a school, or together with some other regulated service. Here, even though the research is not a regulated service, regulated services (such as healthcare and the provision of education) may be integral to the research project. Research in schools or healthcare environments that does not involve delivery of either education or healthcare does not appear to be covered by the Act. Circumspection is needed in this context, and if there is significant uncertainty as to whether the Act applies, then the procedures for assessing risk in employees in that institution should be followed.

FAQ (from ‘Additional information relating to students and staff’, POD, Massey, 2015)

I am undertaking research in relation to children and I may need to work with children under the age of 17 by interviewing them or go into a school to conduct my research. Do I need to have a safety check?

If the research is being funded by a specified organisation such as a DHB or a registered school then you may be required to undergo a safety check. But if your research is not funded in this way and your contact with the children is intermittent then it is unlikely you will need to go through a safety check.

It is the responsibility of the agency in which the research takes place to determine what safety checks are required for persons carrying out research involving children under their care *cf* the current requirement for police checks for researchers (& others going into schools).

In the case of researchers who are currently employed and covered by the Act the checks are requirement, again for the employing agency.

Additional observations

There is perhaps a wider set of issues for research raised by the VCA since its administration is largely out of Massey’s hands. There is a disconnect between the definition of “child” in the Code and in the VCA or indeed between the VCA and numerous other legislative provisions.

Section 5 of VCA states:

child means a person who—

- (a) is under the age of 17 years; and
- (b) is not married or in a civil union.

The purpose of the Act is to protect [vulnerable] children – in the current state of implementation all children have to be regarded as vulnerable.

Unless the nature of the research renders the possibility of children being seen to be at risk as a probability rather a possibility – the recognition that this might arise in the course of research would not add to the approval criteria.

Example – a research proposal relating to the use of illegal drugs or abuse of legal ones (such as alcohol) where the participants' family situation would be included and so children would be perceived by a reasonable observer, would not under VCA require any additional considerations to those in our Code.