

# HEALTH ACT 1956 125 MEDICAL EXAMINATION OF CHILDREN

## Section 125 Health Act 1956

Reprinted as at 29 November 2010

- (1) In this section—

**Child care centre** has the same meaning as in section 105(3) of the Children and Young Persons Act 1974 Child care centre: "s 105(3) of the Children and Young Persons Act 1974" has been substituted for section 45A of the repealed Child Welfare Act 1925.

**Private school** means a school registered under section 186 of the Education Act 1964 and any premises, not being so registered and being neither a child care centre nor a public school, which are or purport to be mainly for the care or training of children, whether for reward or not.

**Public school** means a school established under Part 3 of the Education Act 1964; and includes a kindergarten or other institution providing pre-school education recognised under regulations made pursuant to section 70 of that Act.

- (2) Any medical officer employed in the Ministry or other person authorised by the Minister to exercise the powers conferred by this section on an officer so authorised, or any nurse employed by the Royal New Zealand Society for the Health of Women and Children (Incorporated) engaged in work pursuant to a contract in that behalf between the said Society and the Minister, may at all reasonable times enter any public school or child care centre and examine the children attending the school or centre, and may notify the parent or guardian of any such child, or any other person whom he reasonably believes to be concerned with the welfare of the child, of any condition which in his opinion is affecting the health or normal development of the child or of any disease or defect from which in his opinion the child may be suffering.
- (3) The powers conferred by subsection (2) of this section may be exercised in respect of any private school, and in respect of the children attending there, if application in that behalf is made in writing to the Medical Officer of Health by the controlling authority thereof. Any such application may be revoked in like manner at any time. Section 125 was substituted, as from 23 November 1967, by section 3(1) Health Amendment Act 1967 (1967 No 78).

Subsection (2) was amended, as from 30 November 1979, by section 8 Health Amendment Act 1979 (1979 No 64) by inserting the words ", or any nurse employed by the Royal New Zealand Society for the Health of Women and Children (Incorporated) engaged in work pursuant to a contract in that behalf between the said Society and the Minister".

Subsection (2) was amended, as from 1 July 1993, by section 35 Health Amendment Act 1993 (1993 No 24) by substituting the words "Ministry or other person" for the words "Department of Health or by an area health board or other officer so employed and".

**GUIDELINES FOR THE USE OF POWERS UNDER  
SECTION 125 OF THE HEALTH ACT 1956  
MEDICAL EXAMINATION OF CHILDREN**

Section 125 of the Health Act 1956, entitled Medical Examination of Children, (Appendix permits a person authorised by the Minister to enter public schools or early childhood centres at all reasonable times to examine children. These powers are also extended to private schools where the controlling authority of the school has applied to the Medical Officer of Health,

Where the powers of the section are used there is no legal requirement for consent either from the child, the child's parents or guardians, or the school proprietors. The authorised person may notify the parents or guardian of the child, or any other person believed to be concerned with the child's welfare, of the results of the examination; there is no explicit requirement that this should be done.

The Minister of Health considers that officers authorised under Section 125 should act within the confines of the guidelines set out below to ensure that these powers are used appropriately.

**SITUATIONS UNDER WHICH POWERS UNDER SECTION 125 SHOULD BE USED**

- (1) All health services should be provided with the agreement of the management committee of the early childhood centre, or the Board of Trustees of the school concerned. Powers under Section 125 should never be used to override the requirement to arrange the provision of services in agreement with the school or early childhood centre concerned.'
- (2) Powers under section 125 can be used only when the examination is carried out at the school or early childhood centre.
- (3) Use of powers under section 125 should be restricted to situations where the consent of a parent or guardian has not been obtained, or it is not clear whether it has been obtained, and

Either

- the requirement for parental consent would prevent the carrying-out of routine screening;

or

- there could be significant risks to the health of a child (or other children) if the examination was not carried out. This could occur either:
  - (a) When a health problem which requires treatment is suspected and reasonable attempts to contact the parent or guardian have failed, or
  - (b) When abuse or neglect is suspected and it is considered that a parent or guardian might refuse permission for an examination to be carried out.

- (4) The person who performs the examination should:

- in general be the person who normally delivers health services to the school or early childhood centre concerned; OR
- be appropriately qualified and experienced for the examination undertaken.

**EFFORTS TO SEEK PARENTAL CONSENT**

Although consent for health services delivered in schools and early childhood centres is often sought by or through the school or centre concerned, it is the responsibility of the health service provider either to seek consent or to insure that consent has been sought.

For routine screening:

- (a) Powers to proceed with routine screening in the absence of the consent of a parent or guardian have been granted by the Minister because it is recognised that past consent procedures or records of parental consent may be inadequate.
- (b) There is no requirement at present to seek specific consent for routine screening. It is expected that health service providers will move to improve consent procedures to the point that reliance on the powers of Section 125 for routine screening will be reduced to exceptional cases.

In cases of suspected health problems

- (a) Before examining the child, the health service provider should either endeavour to contact the parent or guardian, or ensure that the school/early childhood centre has attempted to contact the parent, to advise them what is to be done and seek their consent. If the parent or guardian cannot be contacted to give consent, the health service provider can examine the child.

In cases of suspected abuse or neglect

- (a) In the case of suspected physical or sexual abuse or neglect, the health service provider should, after consulting with school staff as appropriate, make a judgement as to whether it is appropriate to seek consent.

## **EXAMINATIONS PROVIDED BY PERSONS USING POWERS OF AUTHORISATION UNDER SECTION 125**

- (1) As a general principle, no authorised person should carry out an examination beyond their technical competence and experience. Referrals should be made to other competent persons where required.
- (2) The following list is intended to indicate the type of examinations which may be provided by persons using powers authorised under Section 125.
  - (a) Medical Officers/Medical Officers Of Health:
    - examinations required as part of routine screening
    - medical examinations of children, to initially identify suspected abuse, neglect or
    - medical problems, on referral from teachers, public health nurses and others
  - (b) Public Health Nurses:
    - new entrant and other routine health screening
    - initial assessment (not diagnostic examination) for suspected health problems which require nursing expertise, following referrals from teachers and others where a health problem (such as scabies or school sores) is suspected.
    - initial examination of children in cases where abuse or neglect is suspected.
  - (c) Vision Hearing Testers/Community Health Workers
    - routine vision hearing screening, including tympanometry and pure tone audiometry.
  - (d) Plunket Nurses
    - screening as part of routine health surveillance
    - initial examination of children in cases where abuse or neglect is suspected.
- (3) Section 125 relates to medical examinations only. Except for emergency first aid, no treatment is to be given without the specific consent of a parent or guardian. Consent for immunisation must be obtained in all cases.

### **NOTIFICATION OF PARENTS OR GUARDIANS AFTER THE EXAMINATION**

Parents or guardians must be informed that their child has been examined and the outcome of the examination. An exception is where the examination appears to confirm abuse or neglect. In this case, a decision on the information to be given to parents should be made in consultation with the Children and Young Persons' Service.

### **EVIDENCE OF AUTHORISATION UNDER SECTION 125**

All persons authorised under section 125 must produce evidence of their authorisation on request.