



New South Wales

Commission for Children and Young People Regulation 2009

under the

Commission for Children and Young People Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Commission for Children and Young People Act 1998*.

GRAHAM WEST, MP
Minister for Youth

Explanatory note

The objects of this Regulation are as follows:

- (a) to prohibit a self-employed person from engaging in paid child-related employment unless the person holds a certificate (a *child-related employment certificate*), issued by the Commission for Children and Young People (*the Commission*), to the effect that the person is not a prohibited person within the meaning of Division 2 of Part 7 of the *Commission for Children and Young People Act 1998 (the Act)*,
- (b) to make provision for applications for, and the issue by the Commission of, child-related employment certificates,
- (c) to make provision for the revocation of a child-related employment certificate where the Commission becomes aware that the person to whom the certificate applies is a prohibited person,
- (d) to make provision for the display and production of a child-related employment certificate by a self-employed person,
- (e) to prohibit a person using or attempting to use a child-related employment certificate that does not apply to the person with the intention to deceive,
- (f) to remove the requirement for an employer to carry out the procedures of background checking of an applicant for child-related employment under Division 3 of Part 7 of the Act where the applicant is to perform work as a self-employed person for or in relation to a child under a contract of services with that child or a parent of that child.

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Explanatory note

This Regulation is made under the *Commission for Children and Young People Act 1998*, including paragraph (b) of the definition of *child-related employment* in section 33 (1), and sections 33P and 51 (the general regulation-making power).

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Clause 1 Commission for Children and Young People Regulation 2009

Part 1 Preliminary

Commission for Children and Young People Regulation 2009

under the

Commission for Children and Young People Act 1998

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Commission for Children and Young People Regulation 2009*.

2 Commencement

This Regulation commences on 17 April 2009.

3 Definitions

(1) In this Regulation:

child-related employment has the same meaning as in Part 7 of the Act.
child-related employment certificate—see Part 2.

prohibited person has the same meaning as in Division 2 of Part 7 of the Act.

the Act means the *Commission for Children and Young People Act 1998*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Certificates for self-employed persons in child-related employment

4 Application of Part

This Part applies only in relation to paid child-related employment.

5 Meaning of “child-related employment certificate”

- (1) In this Part, *child-related employment certificate* means a certificate issued under this Part to a self-employed person engaged in child-related employment in which the Commission certifies that the person is not a prohibited person.
- (2) A child-related employment certificate in respect of a person the subject of an order under section 33H or 33I of the Act that is subject to conditions is itself subject to those conditions.

6 Application for and issue of child-related employment certificate

- (1) A person who is at least 18 years of age and who is, or intends to become, a self-employed person engaged in child-related employment, may apply to the Commission for a child-related employment certificate.
Note. Under clause 10, a self-employed person must not engage in child-related employment unless the person holds a child-related employment certificate.
- (2) An application for a child-related employment certificate must be:
 - (a) in the form approved for the time being by the Commissioner, and
 - (b) accompanied by a fee of \$80, and
 - (c) lodged at a place approved for the time being by the Commissioner.
- (3) The Commission is to issue a child-related employment certificate if the Commission is satisfied that the applicant:
 - (a) is at least 18 years of age, and
 - (b) is, or intends to become, a self-employed person engaged in child-related employment, and
 - (c) is not a prohibited person.
- (4) The Commission may require an applicant to provide further information in relation to the application and may decline to deal with the application further unless that information is provided in accordance with the requirement.

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Part 2 Certificates for self-employed persons in child-related employment

- (5) If a person is the subject of an order under section 33H or 33I of the Act that is subject to conditions, any child-related employment certificate issued to the person must expressly state that:
- (a) the person is the subject of an order that is subject to such conditions, and
 - (b) the certificate is, by operation of clause 5 (2) of this Regulation, also subject to those conditions.

Note. Details of conditions imposed on orders made under sections 33H and 33I of the Act may be viewed on the Commission's website: www.kids.nsw.gov.au.

7 Period for which child-related employment certificate remains in force

A child-related employment certificate remains in force for 3 years from the date on which the certificate is issued unless sooner revoked under clause 8.

8 Revocation of child-related employment certificate

- (1) The Commission is to revoke a child-related employment certificate if the Commission becomes aware that the person to whom the certificate applies is a prohibited person.
- (2) If a child-related employment certificate is revoked, the Commission is to give notice to the person to whom the certificate applies to the effect that the certificate has been revoked because the person is a prohibited person and that the certificate must be surrendered to the Commission immediately. For that purpose, the certificate may be surrendered to the Commission by post or by any other means.
- (3) If the person fails to surrender the certificate to the Commission immediately, the person is guilty of an offence.
Maximum penalty: 20 penalty units

9 Disclosure of information to Commission

For the purposes of enabling the Commission to determine whether or not an applicant for a child-related employment certificate is a prohibited person or whether or not to revoke a child-related employment certificate, the Commissioner of Police may disclose (or arrange for a member of the NSW Police Force to disclose) the following to the Commission:

- (a) information relating to any relevant criminal record of the applicant,
- (b) information as to whether or not the applicant is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*.

10 Self-employed persons not to engage in child-related employment without certificate

- (1) A person must not engage in child-related employment as a self-employed person unless the person holds a child-related employment certificate that is in force.
Maximum penalty: 20 penalty units.
- (2) A person is not criminally responsible for an offence against this clause if the person did not know, at the time of the commission of the offence, that the employment concerned was child-related employment.
- (3) The defence under subclause (2) is not satisfied if the person has been served by the Commission with a notice informing the person that the employment concerned is child-related employment.
- (4) This clause does not apply to a self-employed person who is under 18 years of age.
- (5) This clause does not apply to a bus driver who holds an appropriate authority under Division 2 of Part 2 of the *Passenger Transport Act 1990* or an authorised taxi-cab driver within the meaning of Division 5 of Part 4 of that Act.
- (6) This clause has no operation until 1 May 2010.

11 Certificates to be displayed and produced on request

- (1) A self-employed person who engages in child-related employment at a fixed place of work must ensure that a child-related employment certificate, issued to the person and in force, is prominently displayed at all times at the place of work.
Maximum penalty: 20 penalty units.
- (2) A self-employed person who engages in child-related employment other than at a fixed place of work must, on the request of a person seeking to engage the self-employed person in child-related employment, produce for inspection a child-related employment certificate issued to the person and in force.
Maximum penalty: 20 penalty units.
- (3) A self-employed person who engages in child-related employment other than at a fixed place of work must, on the request of an authorised officer, produce for inspection a child-related employment certificate issued to the person and in force.
Maximum penalty: 20 penalty units.

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Part 2 Certificates for self-employed persons in child-related employment

- (4) A person is not criminally responsible for an offence against subclause (1), (2) or (3) if the person did not know, at the time of the commission of the offence, that the employment concerned was child-related employment.
- (5) This clause does not apply to a self-employed person who is under 18 years of age.
- (6) In this clause, *authorised officer* means:
 - (a) a police officer, and
 - (b) an officer of the Commission authorised by the Commissioner for the purposes of this clause.
- (7) This clause has no operation until 1 May 2010.

12 Unauthorised use of child-related employment certificate

A person must not, with intention to deceive, use, or attempt to use, a child-related employment certificate that does not apply to the person.
Maximum penalty: 20 penalty units.

Part 3 Background checking

13 Exclusion from “child-related employment”: background checking not to be undertaken for certain self-employed persons

For the purposes of section 37 of the Act, child-related employment is taken not to include work performed by a self-employed person for or in relation to a child under a contract of services with that child or a parent of that child (whether entered into directly or through the agency or facilitation of a third party).

Note. Accordingly, a parent (as employer) is not to carry out any of the procedures of background checking of an applicant for child-related employment where the applicant is to work as a self-employed person.

For example, a parent is not to undertake background checking of a piano teacher or tutor directly engaged by the parent for his or her child or engaged by the parent through the agency or facilitation of a third party such as a school or Parents and Citizens Association (P&C).

However, the parent may request to see, and such a self-employed person must produce for inspection, a child-related employment certificate issued to the person (see clause 11 (2) of this Regulation).