

# Commission for Children and Young People Regulation 2009

[2009-123]



New South Wales

## Status Information

### Currency of version

Historical version for 31 March 2010 to 2 March 2011 (accessed 18 July 2024 at 11:25)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 31 March 2010

# Commission for Children and Young People Regulation 2009



New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	4
1 Name of Regulation .....	4
2 Commencement .....	4
3 Definitions .....	4
<b>Part 2 Certificates for self-employed persons in child-related employment</b> .....	4
4 Application of Part .....	4
5 Meaning of “child-related employment certificate” .....	4
6 Application for and issue of child-related employment certificate .....	5
7 Period for which child-related employment certificate remains in force .....	6
8 Revocation of child-related employment certificate .....	6
9 Disclosure of information to Commission .....	6
10 Self-employed persons not to engage in child-related employment without certificate .....	6
11 Certificates to be displayed and produced on request .....	7
12 Unauthorised use of child-related employment certificate .....	7
<b>Part 3 Background checking</b> .....	8
13 Exclusion from “child-related employment”: background checking not to be undertaken for certain self-employed persons .....	8
14 Exclusion from “child-related employment”: background checking not required for certain volunteers .....	8

..... 8

**Part 4 Miscellaneous** ..... 8

15 Definition of “child-related employment” ..... 8

16 Transitional provision relating to existing prohibited persons..... 9

# Commission for Children and Young People Regulation 2009



New South Wales

## 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.
- (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](http://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 2011.

#### **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.

(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 2011.

#### **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).

### 14 Exclusion from “child-related employment”: background checking not required for certain volunteers

Child-related employment (as referred to in paragraph (c2) of the definition of **primary child-related employment** in section 37 (6) of the Act) does not include work performed by a volunteer that involves the mentoring of disadvantaged children unless the mentoring comprises:

- (a) developing family-like relations, and
- (b) regular and ongoing meetings with the children concerned.

## Part 4 Miscellaneous

### 15 Definition of “child-related employment”

(1) **Extended meaning—employees of persons or bodies contracted to provide services for relevant agencies** For the purposes of Part 7 of the Act, child-related employment includes work performed by a person who is an employee of a person or body that is contracted to provide services for a relevant agency within the meaning of that Part 7, but only if:

- (a) the employment involves direct contact with children and the contact is not directly supervised by a person having the capacity to direct the employee in the course of his or her work, and
- (b) the direct contact occurs on a regular or extended basis on premises occupied by a relevant agency, and



(c) the employee's presence on those premises at any time is more than just a fleeting or transient presence.

(2) **Extended meaning—provision of personal care services to children with disabilities** For the purposes of Part 7 of the Act, child-related employment includes employment that involves the provision of personal care services to children with disabilities, but only if:

(a) the employment involves an intimate level of direct contact with those children (such as assistance with bathing, dressing or toileting), and

(b) the contact is not directly supervised by a person having the capacity to direct the person in the course of the employment.

(3) **Limited application of definition in relation to self-employed persons or subcontractors** Despite paragraph (a1) (vii) of the definition of **child-related employment** in section 33 (1) of the Act, child-related employment for the purposes of Part 7 of the Act does not include work performed by a self-employed person or subcontractor on premises occupied by a relevant agency if:

(a) the direct contact with children involved in that work does not occur on a regular or extended basis, or

(b) the presence of the self-employed person or subcontractor on those premises at any time is merely fleeting or transient.

## 16 Transitional provision relating to existing prohibited persons

(1) In this clause:

**existing prohibited person** means a person who, immediately before 31 March 2010, was a prohibited person.

(2) For the purposes of sections 33C and 33E of the Act, child-related employment does not, to the extent to which those sections would otherwise apply in relation to an existing prohibited person remaining in child-related employment or an employer continuing to employ such a person in child-related employment, include child-related employment as referred to in the following provisions:

(a) paragraph (a1) of the definition of **child-related employment** in section 33 (1) of the Act (as inserted by the [Children Legislation Amendment \(Wood Inquiry Recommendations\) Act 2009](#)),

(b) clause 15 (1) or (2) of this Regulation.

(3) Subclause (2) ceases to have effect in relation to an existing prohibited person who is employed in child-related employment as referred to in subclause (2) (a) or (b) on whichever of the following dates is the later:

(a) 1 July 2010,

- (b) if the existing prohibited person makes a review application under section 33H or 33I of the Act before 1 July 2010—the date on which the review application is withdrawn or finally determined.