

Regulatory Impact Statement

Children and Young Persons (Care and Protection - Child Employment) Regulation 2015

September 2015

SUBMISSIONS

Post submissions to:

Children's Guardian
Office of the Children's Guardian
Level 13, 418A Elizabeth St
Surry Hills NSW 2010

or

Email submissions to:

kids@kidsguardian.nsw.gov.au

The final date for receipt of submissions is 27 October 2015

A copy of this RIS and proposed regulation is available from the Office of the Children's Guardian:

website: www.kidsguardian.nsw.gov.au
email: kids@kidsguardian.nsw.gov.au
phone: (02) 8219 3600

The current Act and Regulation are also accessible online at www.legislation.nsw.gov.au.

If you would like to provide comments in an alternative format or make an enquiry please call (02) 8219 3600.

Table of contents

1. Introduction	4
1.1 Requirement for a Regulatory Impact Statement	4
1.2 Purpose of this Regulatory Impact Statement	4
2. Consultation process	5
3. About the Act and Regulation	7
4. Objective of the Regulation	8
5. Options for achieving objectives	9
6. Impact assessment	10
7. Discussion of proposed amendments to the Regulation	17
7.1 Persons taken to employ children	17
7.2 Performer representatives	19
7.3 Penalty provisions	19
7.4 Fee structure and charges	20
7.5 Compliance incentive	22
7.6 Child safe policy and procedure	22
7.7 Record keeping	23
7.8 Compliance and monitoring	23
7.9 Notification of illness and injury	24
7.10 Breaks	24
7.11 Hours and times of work	25
7.12 Supervision	27
7.13 NSW comparison with other jurisdictions	27
8. Review and evaluation	28
APPENDIX 1: Relevant research	29
APPENDIX 2: Identified stakeholders	33
APPENDIX 3: Comparison of current regulations and proposed amendments	34
APPENDIX 4: Comparison of NSW child employment regulations to other jurisdictions	38

1. Introduction

1.1 Requirement for a Regulatory Impact Statement

The *Subordinate Legislation Act 1989* provides for the automatic repeal of the statutory rules (Regulation) after they have been in force for five years. The Children and Young Persons (Care and Protection) (Child Employment) Regulation 2010 (the Regulation) will be repealed on 1 December 2015. It is proposed that the Regulation be remade with some amendments.

A Regulatory Impact Statement (RIS) is released along with the draft regulation so that stakeholders and interested community members can consider the proposed requirements and submit comments and suggestions. The draft regulation may then be amended taking into account the suggestions and comments made in the submissions received.

It is proposed that the new regulation would come into effect by 1 December 2015.

1.2 Purpose of this Regulatory Impact Statement

In accordance with the *Subordinate Legislation Act 1989* and the NSW Government's better regulation principles, the Office of the Children's Guardian (OCG) is consulting with the community about the proposed regulations.

The *Subordinate Legislation Act 1989* provides the framework and rules by which a regulation is made in NSW and whose primary objective is to reduce any unnecessary regulation with a key requirement being that the RIS is prepared and public consultation is undertaken before any new regulation can be made.

The purpose of this RIS is to:

- meet the requirements of the *Subordinate Legislation Act 1989*
- comply with the NSW Government requirements under the Guide to Better Regulation.

The proposed regulation provides the administrative mechanism to realise the intent of the *Children and Young Persons (Care and Protection) Act 1998* (the Act). The scope of the regulation is limited to the power under the Act.

It is important that the RIS demonstrates that the proposed regulation is, on balance, the best option in providing the greatest overall benefit to the public.

The RIS provides:

- a statement of objectives to be achieved by the regulation
- an identification of alternative options by which those objectives can be achieved
- an assessment of costs and benefits of the proposed regulation
- an assessment of costs and benefits of each alternative option
- an assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community

- an outline of the consultation program to be undertaken.

This RIS includes a brief background to the Regulation and then considers the objectives of the proposed regulation, the options for achieving these objectives and an assessment of the costs and benefits of alternative options.

The Office of the Children’s Guardian proposes to remake, with changes, the provisions of the Regulation, which is due for repeal on 1 December 2015.

2. Consultation process

Making a submission

Interested parties are invited to submit written comments on the proposed regulation. Submissions about the proposed regulation can be sent by post or email.

The closing date for receipt of submissions is 27 October 2015.

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The current Act and Regulation are also accessible online at www.legislation.nsw.gov.au.

Confidentiality of submissions

The consultation process is public and open. Submissions will be published on the OCG website. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission. Automatically generated confidentiality statements in emails are not sufficient. However, even if you state that you do not wish certain information to be published, there may be circumstances in which the NSW Government is required by law to release that information, for example, in accordance with the *Government Information (Public Access) Act 2009*. It is a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Initial consultations

Preliminary consultation with key stakeholder groups to review the 2010 Regulation began in August 2014 with a Children's Employment Forum that 200 stakeholders attended.

In February 2015, an initial consultation issues paper was distributed to all stakeholders inviting comment on a set of specific questions. In addition, two face-to-face consultations were held: one for government agencies; and another for peak non-government organisations having specific interest in children's employment regulation. A list of these agencies is at Appendix 2.

To ensure children's participation, a children's survey was developed and distributed to all employers and child performer representatives. Specific questions were put to children relating to certain provisions in the Regulation. Comments and suggestions from this initial consultation and the comments from the children's survey have been incorporated into this RIS and the proposed regulation.

Feedback from key stakeholders indicates that overall, the Regulation containing the code of practice has functioned well over the last five years of operation and compliance is considered to be generally high with authorised employers. Some stakeholders also raised specific issues about the code that they would like clarified or addressed. This RIS is intended to address some of these issues.

Identified stakeholders

The RIS has been provided directly to some stakeholder organisations. A list of these stakeholders is at Appendix 2.

Evaluation of submissions

All submissions will be considered and assessed and a report prepared to the Minister detailing the issues raised and whether the proposed regulation should be amended. If further information is required, targeted consultation will be held before the regulation is finalised.

Commencement of the new Regulation

After the Minister has finalised the proposed regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the new Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

It is currently proposed that the proposed regulation will be published on 26 September 2015 and the new Regulation will commence on 1 December 2015.

This will provide enough time for the industry to make any necessary changes to business practices and procedures before the new laws come into force.

3. About the Act and Regulation

The Office of the Children's Guardian regulates children's employment in NSW under the following legislation:

- *Children and Young Persons (Care and Protection) Act 1998* (the Act), Chapter 13 and Schedule 2
- Children and Young Persons (Care and Protection) Child Employment Regulation 2010 (the Regulation).

The Act's main emphasis is on the physical and emotional well-being of the employed children. The Act makes it an offence for a person to cause or allow a child to take part in any employment in the course of which the child's physical or emotional well-being is put at risk (s222). A child is defined as a person under the age of 15 years, or in the case of employment as a model, a person under the age of 16 years.

Under the Act and the Regulation, employment is defined as paid employment or employment under which some other material benefit is provided to the child or another person for the child's services. However, the Act authorises the making of regulations to declare specified classes of employers to be taken to employ a child or specified classes of children. The Act also authorises the Children's Guardian to notify persons that they are subject to the legislation in respect of particular instances of employment.

For prescribed activities, the Act requires all employers of children to hold an employer's Authority (s.223 (1)) unless specific exemptions apply (s.224).

Prescribed activities are:

- taking part in an entertainment or exhibition
- taking part in a performance which is recorded for use in a subsequent entertainment or exhibition
- offering anything for sale from door-to-door
- anything else that is prescribed for the purposes of s.223 by the Regulation.

Exemptions apply if:

- employment is for fundraising appeals (within the meaning of the *Charitable Fundraising Act 1991*)
- employment is for occasional entertainment or exhibition where the net proceeds are to be applied wholly for a charitable object
- the employer is exempted by the regulations
- the employer is exempted by the Minister.

Schedule 2 in the Act also provides for:

- the charging of fees for applications for an Employer's Authority or for an exemption
- the making of Regulations to provide for the reduction or rebating of fees

- the placing of conditions on the Authority by the Regulation or by the Office of the Children’s Guardian
- a maximum period of 12 months for the duration of the Authority
- a capacity by the Office of the Children’s Guardian to revoke or vary any condition of an Employer’s Authority, or impose further conditions.

4. Objective of the Regulation

The broad purpose of the Act and the Regulation is to protect children under the age of 15 working within the following prescribed industries:

- entertainment, including film and television and theatrical performances
- exhibition
- still photography
- door-to-door sales
- under 16 years of age for modelling.

The Office of the Children’s Guardian assesses and grants an Authority for child employment to the employer in these industries.

The primary objective of the Regulation is to provide the legislative support and administrative detail for the operation of the Act.

Its objectives are to

- promote the safety, welfare and well-being of children employed in the entertainment and exhibition industries, still photography, and door-to-door sales
- ensure that children’s employment does not compromise their personal or social development and their ability to benefit from education
- prevent exploitation or abuse of children arising from the inherent vulnerability and inexperience of children in their dealings with adult employers.

The Regulation ensures that young people are protected in their work environment. These obligations are not unduly onerous for employers who already comply with their general legal obligations towards their employees and guidance and support is available from the Office of the Children’s Guardian.

Importantly, under the Regulation, all employers’ Authorities are subject to the condition that the employer, and all persons under their control, will comply with the requirements of the code of practice contained in Schedule 1 to the Regulation. The requirement to comply with the code of practice also applies to those employers that have been granted an exemption from holding an Authority.

The code includes the following provisions:

- records of employment to be kept for every child
- the number of hours and days that a child can work and the manner in which this is calculated (for example, the travelling time to and from the work is to be included as are any breaks)
- minimum break time required between successive shifts
- schooling requirements

- food and drink requirements
- minimum standards for dressing room and toilet facilities
- prohibition of punishment of a child
- requirement for any role or situation in which the child is placed to be appropriate to the child's age, psychological development and emotional maturity
- prohibition of exposing a child to scenes which are likely to cause distress or allowing a child to become distressed
- prohibition of nudity, either of the child or any other person
- adequate supervision of the child, taking into account the age of the child
- special provisions for children under 3 years of age and special provisions for babies under 12 weeks
- penalty provisions for breaches of the provisions within the Regulation.

The Act and the Regulation also enable the variation of employment conditions for individual children, on a case-by-case basis, with due regard to the developmental stage and best interests of the child. In practice, the Office of the Children's Guardian will only grant a variation if it can be demonstrated that there will be no detrimental impact on the child.

5. Options for achieving objectives

The primary objective of the Regulation is to provide the legislative support and administrative detail for the operation of the Act. The Office of the Children's Guardian has identified five options that can meet the objectives once the Regulation expires.

Option 1: Do nothing

Allow the Regulation to lapse on 1 December 2015. Let the Act operate without an accompanying regulation on children's employment.

Option 2: Establish a registration and code of practice scheme

Allow the Regulation to lapse. Establish a registration-based scheme, requiring all employers of children, paid and unpaid, to register with the Office of the Children's Guardian and require all employers of children to develop and maintain their own "child-safe child-friendly" policy and code of conduct.

Options 3: Industry self-regulation

Allow the Regulation to lapse. Provide the legislative support and administrative detail for the operation of the Act through non-legislative means such as non-regulatory administrative procedures and voluntary codes of practice.

Option 4: Remake the Regulation without amendment

Remake the Regulation without amendment.

Option 5: Remake the Regulation with amendment

Remake the Regulation with amendments to provide greater legislative support and administrative detail for the operation of the Act.

6. Impact assessment

Option 1: Do nothing

The Regulation would lapse on 1 December 2015 and the Act would operate without any accompanying regulation about children's employment.

In the absence of a Regulation, governments can promote informed decisions and responsible behaviour by individuals and businesses by making relevant information easily accessible. This will also enable consumers, workers, and the public to have a better understanding of their rights and make better decisions. Another similar approach is for governments to exert influence on employers to act in a socially responsible manner when employing children.

These approaches would be useful as complementary to regulation. They would promote greater awareness of the needs of children to employers and enhance the capacity of parents to better support their children in employment.

While there is a place for non-regulatory approaches in children's employment, they would not meet the objectives of the regulation. Generally, children are at a significant disadvantage in employment negotiations because they do not have the same level of experience, knowledge and skills in such matters as adults. Employment in the prescribed industries is particularly problematic, as chasing the fame and prestige of being employed in such industries may make children and their parents more vulnerable and less likely to protect their interests. Furthermore, the impacts on children, and especially young children, of adverse employment experiences can be much stronger and longer lasting than impacts on adults.

Costs

Children would be more likely exposed to risks of injury and emotional harm when employed in the prescribed industries. Children may be placed in situations where there is a risk of physical, emotional harm, and sexual abuse. Their educational outcomes may also be compromised due to the potentially demanding workloads expected of them, and parents may not be supported in fulfilling their responsibility to safeguard the welfare of their children.

It is difficult to quantify these costs. Some understanding of the impact can be gained by considering potential costs such as:

- cost of medical treatment or hospitalisations associated with increased incidents involving children employed in the prescribed industries
- costs associated with investigation and prosecution of potential acts amounting to criminal conduct
- cost of psychological care associated with children who may have suffered emotional harm and abuse
- loss of income due to diminished job opportunities as a result of poor educational outcomes.

There would be a high social cost with this option as there would be significant uncertainty for industry and consumers about their rights and obligations. Current legislative provisions such as the *Work Health and Safety Act 2011*, *Industrial Relations Act 2011*, *Fair Work Act 2009 (Cth)* have not been effective in accommodating the rigours and expectations of children working in the entertainment, exhibition, still photography or door-to-door sales industries, increasing the risk to

children working in these industries. To leave the safety and wellbeing of children under these legislative provisions would fall short of protecting children from harm in these industries. The temptation of fame and fortune has the potential of overshadowing the health and safety concerns of children.

Without the guidance and associated powers contained within the Regulation, it would be difficult to administer a compliance scheme effectively.

Benefits

Employers

By having no regulation, the responsibility is on the employer to establish the conditions by which a child is employed, with the impact being more flexible working conditions that more than likely would benefit the employer rather than the child. Also lower production costs could be incurred as a result of the increased flexibility and avoided costs of child supervision and child care workers. There might be also some increase in NSW's share of film and television production as employers who prefer to work in an unregulated state or territory might switch their production to NSW.

Government

There would be financial cost savings to the Office of the Children's Guardian as they would have a limited monitoring and compliance responsibility.

Conclusion

While the benefits of non-regulation may be measured in terms of lower costs to employers, the potential costs in terms of risks to children and consequently industry reputation are significant. Any benefits are outweighed by the costs resulting in the assessment of this option as being medium

Option 2: Establish a registration and code of practice scheme

A registration scheme would be created under this option, requiring all employers of children, whether the children are paid or non-paid, to register as an employer with the Office of the Children's Guardian.

Also it would be mandatory for employers to develop their own 'child-safe, child-friendly' policy and code of practice.

The Office of the Children's Guardian would review and accredit the policies and codes of practice and continue regulation through a comprehensive compliance program.

This scheme would be supported by an information and advisory service for children and young people, parents, schools and employers.

Costs

Employers

Employers would experience costs in developing their own code of practice and ensuring compliance with it.

Government

The administrative costs would be high due to:

- the increased workload associated with the initial registration of employers
- the processing of registrations and reviewing of non-standard codes of practice. There would not be consistency in the various codes of practice, with the Office of the Children's Guardian unable to effectively maintain the level of protection from injury, harm, or exploitation as it can through the Regulation.

In addition, as employers develop and maintain their own code of practice and policies, they may not be updated in line with changes in legislation. There is also a risk of policies, once developed by employers, being ignored and not put into practice. This puts children at significant risk, at a cost which cannot be quantified.

Benefits

Employers

The major benefit to employers is that they will be able to tailor a code of practice to their organisation's needs.

Government

The mandatory registration process would:

- create a database which the Office of the Children's Guardian would use to monitor child employment.
- enable the Office of the Children's Guardian to monitor the industry more closely for any emerging trends of non-compliance.

Conclusion

Accreditation-based schemes have been used successfully in a wide range of regulatory contexts such as environmental regulations, consumer regulations, and in the regulation of out-of-home care services by the Office of the Children's Guardian. However, in those contexts the regulated entities tend to be stable, longstanding organisations, whereas the organisational arrangements in the entertainment and exhibition industries can be more transient in nature. Thus, such a scheme may not be the best option for this context. Also, moving to such a scheme requires a sound knowledge base in relation to best practice examples in the industries concerned. At this stage, perhaps all that can be done would be to focus on development of best practice case studies in preparation for such an accreditation scheme in the future.

While the benefits of this option results in greater flexibility for employers, these would be offset by the increased administrative costs to government. The benefits of this option are outweighed by its costs resulting in this option being assessed as medium.

Option 3: Industry self-regulation

This option requires employers to self-regulate through voluntary codes of practice that is monitored by the prescribed industries.

Costs

This option presents significant challenges to both industry and government. The costs would be in terms of meeting these challenges.

Child employment can be incidental to the production and therefore employers may not be aware of the particular challenges and responsibilities required to employ children.

The responsibility is on the various industries to establish a voluntary code of practice to manage the issues that are currently addressed by the Regulation. However, the degree to which the industries would comply with a voluntary code of practice is not clear. On its own, self-regulation does not appear to provide the assurance that there would be adequate protection for children under all circumstances.

The main challenges are:

- there is no peak organisation representing the various sectors within the entertainment industry to draft, implement and then sustain a voluntary code of practice
- the sectors are very fragmented with many employers working as freelancers, subcontractors or sole traders who do not belong to any collective.

In June 2010 the federal government introduced a voluntary industry Code of Conduct on Body Image for the modelling industry. This national industry code recommended organisations signed up to the code only employ children aged 16 and over to work or model in adult catwalk shows or model adult clothing. However investigations by the Office of the Children's Guardian found children under 16 years of age being employed on the catwalk, modelling a variety of clothing or goods.

Self-regulation does not provide the same level of scrutiny and a safeguard for this population. Children's safety and wellbeing cannot be compromised particularly in an industry where safety is designed around adult workers rather than child employees.

Industry bodies would have to set up their own system, as a 'one size fits all' system may not be appropriate to such varied and diverse industries in order to enforce compliance. This would create additional costs to the various industries and possibly make targeted community awareness campaigns by the government less effective. Furthermore, the government would incur increased compliance costs to administer the Act without the supporting detail provided by the Regulation.

Benefits

Self-regulation in place of a regulation would provide the industries with their own set of guidelines that they would be responsible for administering and monitoring. This would benefit employers by taking into account the needs of each industry.

However there would be few benefits to such an outcome apart from the reduction of financial cost to government which would be impacted in other ways such as increased compliance costs to administer the Act without the supporting detail provided by the Regulations.

Conclusion

Without the provisions of a regulatory framework to support the effectiveness of a self-regulation scheme, there is a likelihood that children's welfare would be compromised. Any benefits employers receive from self-regulation will be outweighed by the risk to the safety and well-being of the children.

The overall benefit is assessed as being low to medium.

Option 4: Remake the Regulation without amendment

Costs

Regulations impose costs on employers, causing them to shift resources away from other activities to achieve compliance. However these costs are often justified as a means of improving social welfare, and in the case of children's employment, providing protection for children within the industry.

While remaking the Regulation enables the Act to continue to operate with the current legislative support and administration, feedback and experience with the Regulation has identified ambiguities and practical inflexibilities that cause unnecessary red tape and an increase in administration costs for the industry and the Office of the Children's Guardian.

Employers experience increased costs due to the inflexibility in the Regulation. Government incurs increased administrative costs associated with processing variations to the code of practice due to these inflexibilities.

Benefits

The Regulation has successfully operated with the Act since 2010, providing the necessary operational and administrative details for effective administration of children's employment.

The benefits of Regulation are:

- the safety, welfare and well-being of children employed in the prescribed industries is significantly enhanced
- risks of physical and psychological harm and injury to children employed in the prescribed industries are minimized
- children's personal or social development, their ability to benefit from education, and achieve better employment prospects are not compromised
- parents are supported in fulfilling their responsibility to safeguard the welfare of their children. However, it should be also noted that some parents may see this as an intrusion.

Employers

Benefits to employers include:

- maintenance of established provisions of which employers are aware
- reduced expenditure on staff training.

Government

The government will benefit by:

- reduced costs to educate employers
- reduced administrative costs to implement processes and procedures to support a new regulation.

Conclusion

Feedback from various stakeholders has been that the Regulation is inflexible in certain areas and amendment is sought to take into account industry needs. The costs of this option in terms of its inflexibility outweigh the benefits of not amending the Regulation. The overall benefit of this option is assessed as medium.

Option 5: Remake the Regulation with amendments

The Regulation would be remade with amendments taking into account industry feedback on the Regulation and government's intention to reduce red tape and provide better protection for children.

Costs

Employers

Costs for employers will be incurred in familiarising themselves with the requirements under the Regulation amendment and to ensure their systems and processes support compliance.

Government

Cost to government will be in terms of:

- developing and delivery of an educational program about the amendments to employers
- training and development of staff within the Office of the Children's Guardian to adjust to the new requirements.

Benefits

The proposed amendments will provide greater flexibility and clarity to the Regulation and will result in reduction in red tape.

The benefits expected to be achieved through the proposed amendments include:

- greater flexibility in the age ranges when children are able to work in live performance
- flexibility in the application of hourly breaks taking into account the age and the workload of the child
- introduction of a weekly and three month Authority
- clarity around the supervision requirements of the Regulation
- clarity around the code of conduct's application to children that provide unpaid services to an organisation at the same time as paid children, thereby removing any discriminatory treatment.

The benefits of regulation are:

- the safety, welfare and well-being of children employed in the prescribed industries is significantly enhanced
- risks of physical and psychological harm and injury to children employed in the prescribed industries are minimised

- children’s personal or social development, their ability to benefit from education, and achieve better employment prospects are not compromised
- parents are supported in fulfilling their responsibility to safeguard the welfare of their children. However, it should be also noted that some parents may see this as an intrusion.

It is difficult to quantify the costs and benefits associated with child welfare and well-being, but they are invariably estimated to be highly significant and the child welfare economics literature consistently reports that the benefits of measures to prevent harm and abuse to children far outweigh their costs (Taylor et al, 2008, Wang and Holton, 2007)¹.

Conclusion

While there will be initial costs to both employers and government in terms of education, the benefits in terms of being responsive to industry needs, providing better protection for children, and providing further clarification far outweigh the costs. This option is assessed as providing a high level of benefit.

Summary of assessment

A summary of the costs and benefits of each option has been tabled below:

Table 1: Summary of costs and benefits

Option	Costs	Benefits	Overall Benefit
Option 1	High	Medium	Low
Option 2	Medium	Medium	Medium
Option 3	High	Low	Low-Medium
Option 4	Medium	Medium	Medium
Option 5	Low	High	High

The Office of the Children’s Guardian’s assessment is that the benefits of option 5 are likely to significantly outweigh the costs. This option provides the essential administrative details and legislative support for the Act and has the greatest benefit for children and the community.

The assessment shows that the best option for employers, children, parents and other stakeholders is to remake the regulation with amendments to effectively and efficiently administer the Act and accommodate a child safe framework related to the employment of children in the entertainment, exhibition, still photography and door-to-door sales industry.

¹ Taylor P, Moore P, Pezzullo L., Tucci J., Goddard C and De Bortoli L. (2008). *The Cost of Child Abuse in Australia*, Australian Childhood Foundation and Child Abuse Prevention Research Australia. Melbourne.
Wang CT, Holton J. (2007). *Total estimated cost of child abuse and neglect in the United States*. Prevent Child Abuse America. Chicago, IL:

7. Discussion of proposed amendments to the Regulation

The proposed amendments to the existing Regulation address operational restrictions, provide greater flexibility, and address the concerns that have been raised in the initial consultations about the remaking of the Regulation. These amendments will also continue to support the Office of the Children’s Guardian in effectively administering the child employment legislation and making sure children are safe and protected while at the same time providing them with the opportunity to work in these industries.

The proposed regulation gives employers, parents, children and other stakeholders (such as child employer representatives) greater clarity around the children’s employment legislation.

A comparison table between the Regulation and the proposed regulation is at Appendix 3. Submissions are welcome on any aspect of the proposed regulation or any other relevant issue, whether or not raised in this RIS. However the following discussion points provide greater context for the suggested amendments to the Regulation.

7.1 Persons taken to employ children

7.1.1 Persons responsible for the care, control and direction of children

The Regulation defines a person taken to employ children as a person that makes a payment (or gives any other material benefit) to the child or another person in respect of the services given by the child or in respect of their preparatory services.

This has led to some confusion as to who is the employer in an agency relationship. It has also resulted in organisations holding an Authority on behalf of employers where sufficient care, control, and direction were not able to be exercised.

The Office of the Children’s Guardian believes that during the employment of a child, the person with care, control, and direction over the child is the person responsible for their health, safety, and well-being.

7.1.2 Inclusion of unpaid employment

The Act and the Regulation covers only paid employment or employment under which some other material benefit is provided to the child or another person in respect of services provided by the child, unless declared by the Children’s Guardian under s221(2) of the Act.

The proposed regulation extends the obligations of the employer to cover those children who provide services to organisations for no payment, where other children are being paid by the same organisation on the same production. The intention is to make sure that the children are treated equally on a production.

A number of submissions received from the industry support the view that children, whether paid or unpaid, should not be treated differently where they are part of the same production.

7.1.3 Students require an Authority

The proposed regulation requires that all students who engage children to take part in entertainment, exhibition, a recorded performance or preparatory activities, as a requirement of

their studies, to hold an Authority. This requirement applies whether or not the child or another person, is paid for the child's services.

A student is defined as a person currently enrolled in a tertiary course in film, television, radio, theatre, or photography at university or that is accredited by the Australian Skills Quality Authority.

A number of student productions have been identified which had potentially put children at harm. This was primarily due to low budgets, the students' inexperience in working with children, and a lack of access to advice on children's employment and their well-being. As these students will potentially go on to work in the industry and become leaders, educating them at an early stage is a proactive strategy for the ongoing protection of children. By requiring students to apply for an Authority and requiring notification of their productions involving children, the Office of the Children's Guardian can work closely with the students to achieve their outcomes while ensuring the care and protection of children and young persons.

7.1.4 Impact on stakeholders

Organisations that work together to engage children for the purposes of employment will need to determine who is the 'employer' when applying for an Authority, having the care, control and direction of the child during their employment. Traditional arrangements will need to be reviewed to determine whether this test is met.

Extending the code of practice to include children who are unpaid when children who are employed are at the same location would be an administrative and financial cost to stakeholders. The current code of practice provides an expectation that there will be facilities, food and drinks and, supervision for children who are employed. Providing facilities, food and drink and supervisor to children who are unpaid will be an extra cost to employers.

Where children attend a production and are providing a service, whether this is for free or not, there should be an expectation that their wellbeing is not affected. Employers are obtaining a benefit from these children and have a duty of care towards them regardless of payment being provided.

Students will need to obtain an Authority before they engage children to provide any services. Students currently enrolled in a relevant tertiary course in a university or which is accredited by the Australian Skills Quality Authority will be exempt from the fees payable for the Authority.

7.1.5 Issues for comment

- *Whether the most appropriate person to hold an Authority is the person with the responsibility for the care, control, and direction of the child during the engagement in a prescribed industry?*
- *Should there be an extension to the Regulation to include children not receiving payment or material benefit when employed at the same time and location as children who receive payment or a material benefit are employed?*
- *Should students be required to hold an Authority when engaging children to provide services in entertainment, exhibition, or still photography?*

7.2 Performer representatives

The proposed regulation imposes obligations on performer representatives for the safety, health and well-being of children, which previously were not imposed.

Performer representatives, and all persons under their control, must comply with Part 2 of the code of practice. Part 2, which relates to 'hours of work', applies to performer representatives as they are in the most appropriate position to monitor this condition as the booking agent for their talent.

Performer representatives must also record the Authority number of the employer applying to each occasion on which the child is employed. This is to ensure compliance with section 223(3) of the Act.

Performer representatives must also maintain proper records for a minimum period of six years and are required to produce these records on written notice by the Children's Guardian.

7.2.1 Impact on stakeholders

Performer representatives acting solely as a performance representative will be exempt from holding an Authority. They will need to register their exemption with the Office of the Children's Guardian.

Performer representatives will need to monitor the work and hours provided to their child talent to ensure compliance with the Regulation.

Performance representatives will need to ensure that they maintain appropriate records of a child's employment including:

- employer's Authority number
- contact details of the employer
- contact details of the child employee
- The hours worked by each child represented by the performer representative.

7.2.3 Issues for comment

- *Should performer representatives be obliged to ensure compliance with the hours of work provisions in the proposed regulation?*
- *Should performer representatives maintain records of their talent's employment?*

7.3 Penalty provisions

The proposed regulation includes penalty offences as an enforcement tool for breaches of the legislation.

The amount of penalty units imposed for certain breaches is proportionate to the risks children are exposed to when those provisions have been breached.

Schedule 2 of the proposed regulation lists the applicable penalty units for breaches of each provision. Penalty infringement notices are considered a cost effective enforcement option and can be issued on the spot when breaches have been identified.

7.3.1 Impact on stakeholders

Employers will receive 'on-the-spot' penalty infringement notices for breaches of certain provisions within the Act and Regulation.

The addition of penalty infringement notices as an enforcement option is a timely and cost effective alternate to prosecution. Enforcement tools encourage compliance with the legislation which in turn encourages a level playing field within the industry.

7.3.2 Issues for comment

- *Are penalty infringement notices an appropriate enforcement tool to address non-compliant behaviour?*
- *Are the penalty units allocated to each clause appropriate to address their respective breaches?*

7.4 Fee structure and charges

The application fees, for an Authority for children to work in a production, are set out in clause 8 of the Regulation. The current 2010 Regulation sets a particular fee for either a one month or 12 month period.

Table 2: Existing fees under the Regulation

Authority type	12 months	1 month
Entertainment, exhibition, performance (including still photographic sessions)	\$2,200	\$1,100
Still photographic sessions only	\$968	\$484
Door-to-door sales	\$1,100	\$412

Application fees (including surcharge fees) received by the Office of the Children's Guardian during 2013-2014 totalled **\$258,471.65**. This income helps to offset the cost to government for:

- the administration of the legislation to protect the welfare of children
- assessing production information and conducting audits where required
- monitoring of productions via location visits/inspections for compliance.

Employers who purchase a 12 month Authority tend to be large companies, employers who do a number of productions over the year, or an employer who anticipates that their single production will go over the one month Authority period. Employers who purchase the one month Authority tend to be employers with a one-off production of one or two days of employment for the child, or those employers who are able to pass on the fee to the company that they are doing the work for.

It is proposed that the fees for the Authority continue to be charged however, a new category of fee be introduced for a weekly Authority, and the current one month Authority be extended to cover a three month period. The proposed fee charges reflect the various CPI increases which have occurred between 2010 and 2015. The proposed fees are as follows:

Table 3: Fees under the proposed regulation

Authority type	12 months	3 month	1 week
Entertainment, exhibition, performance (including still photographic sessions)	\$2,440	\$1,830	\$200
Still photographic sessions, door-to-door sales	\$1,075	\$806	\$100
Students (currently enrolled in a tertiary entertainment, exhibition, or photographic course which is accredited by the Australian Skills Quality Authority)	Exempt	Exempt	Exempt

These fees would contribute towards the costs to:

- process the Authority
- assess the production
- where required, provide a location visit for production monitoring.

7.4.1 Impact on stakeholders

While there is no specific data regarding the costs of the Regulation for the employers, there is much anecdotal evidence, based on the experience of the Office of the Children’s Guardian in administering the Regulation.

The Office of the Children’s Guardian recognises that some employers in these industries may face financial challenges. It is often contended that while the fee charged for an Authority may not appear to be a significant amount, in many cases, particularly for low budget / low profit film and drama productions, they impose significant burdens on employers. Similarly, many small businesses in still photography find the fees a burden. It should also be noted that these smaller productions, when unmonitored, can often be high risk productions where children may be asked to work very long hours, perform various stunts or may be exposed to adult sexual themes.

A small number of concerned employers have stated that they will avoid using children younger than 15 and some say they will do their filming elsewhere in the future. Others say that they will change their plans and not pay or reward the children to avoid paying the fee. It appears that these are unintended and undesirable consequences, which in the end disadvantage the very children the legislation is trying to protect.

This more flexible fee arrangement is intended to:

- reduce the number of employers attempting to circumvent the requirements under the code of practice
- increase the number of employers who wish to employ children and provide a safe and child safe environment
- increase the one month Authority to three months, accommodating short mini-series productions as well as post production requirements for smaller productions. This will be a saving for employers who have been required to obtain a 12 month Authority as a result of one month not being long enough for their short production.

7.4.2 Issues for comment

- *Should fees be reviewed to establish a more cost-reflective fee structure?*

7.5 Compliance incentive

Under the current Regulation, the Office of the Children's Guardian can reduce the authority fee by 25% if an employer has demonstrated compliance with the code of practice within the previous two years.

Of the total approved authority applications only 83 employers (45%) received a 25% discount on their application fee because they had demonstrated compliance with the code of practice in the last two years.

This incentive provides a reduction in the fee payable by those employers who have not had a breach in the last two years. However, this incentive does not help those employers who only require an authority on an occasional basis.

Importantly, it is disproportionate in its application, where an employer who has only a one month Authority for a one week production receives no breaches and obtains a discount with their following application while an employer with a 12 month Authority producing 12 shows throughout the year may have one minor breach and is therefore ruled ineligible for the discount.

7.5.1 Impact on stakeholders

The removal of the incentive will affect a significant proportion of Authority holders. However a large proportion of these employers also obtain a 12 month Authority based on the premise that they may be producing a number of productions throughout the year and obtain this Authority as a 'precaution'. The introduction of a one week Authority is also intended to overcome this 'cautionary' employer who may then only require a few weekly Authorities throughout the year resulting in a lower cost.

7.5.2 Issue for comment

- *Should the 25% fee discount currently provided to employers who are able to demonstrate a record of compliance for a period of two years be abolished?*

7.6 Child safe policy and procedure

The proposed regulation includes a provision for employers to implement child safe policies and procedures, including a code of conduct for all employees to be provided to parents, children and employees. The code should include detail on what is considered inappropriate behaviours including personal contact between adult and child employees, spending time alone with children, and discussing or viewing adult material with children. The Office of the Children's Guardian will publish guidelines and provide a community awareness program, based on the current child safe training, to help employers implement these policies and practices.

7.6.1 Impact on stakeholders

The introduction of a child safe policy by employers is not intended to impose a regulatory cost on stakeholders but is intended to be seen as a benefit to them. Feedback received from employers has been that they considered the cost of ensuring a child safe environment provides credibility for them as an organisation and provides better protection for the children who they employ.

The Office of the Children’s Guardian intends to provide tools and resources to help employers develop and implement child safe policies and practices as well as education for parents and children.

7.6.2 Issue for comment

- *Should the Regulation contain a requirement for employers to implement child safe practices and a code of conduct for all employees?*

7.7 Record keeping

The Regulation did not provide clarity on the record keeping requirements of employers. This review provides an opportunity to clarify and make sure that:

- record keeping requirements extend to records of children who are not paid for their services, in circumstances where there are paid and non-paid children
- an employer keeps accurate records in the manner and detail required by the Office of the Children’s Guardian. It is intended resources will be produced to help employers meet this requirement
- employers maintain an incident register that contains details of any incidents that occur while the child is employed and to forward a copy of a report in relation to an incident to the Office of the Children’s Guardian
- the retention of records is an important requirement for compliance and child protection matters. The Regulation does not specify the required time employers must keep records. The proposed regulation stipulates that an employer must keep the employment records of a child for a period of six years, in line with current industrial relations legislation.
- there is an additional requirement for an employer to provide information to the Children’s Guardian within a reasonable time when requested in writing
- any person providing a child to an employer for employment must record the Authority number of the employer every time a child is employed. This is intended to provide greater protection to child employees, and to ensure a ‘level playing field’ in the industry by reducing the number of unauthorised employers.

7.7.1 Impact on stakeholders

It is expected that this clarification will not create an additional regulatory cost as the record keeping provisions mirror the requirements of the *Industrial Relations (Child Employment) Act 2006*.

The introduction of the incident register will require employers to maintain an additional record and forward details of any incidents to the Office of the Children’s Guardian.

All other proposed record keeping requirements are intended to help with the Office of the Children’s Guardian’s monitoring role. Any additional costs to an employer are expected to be minor.

7.8 Compliance and monitoring

Employers must notify the Office of the Children’s Guardian of each instance of child employment before employment begins. The pre-employment notification must include information about the child, the proposed work schedule, risks associated with the child’s work employment location, and the employer’s strategies for managing risks and complying with the code of practice.

The Office of the Children’s Guardian believes the pre-employment notification is an important compliance tool to ensure any potential harm to children is identified at the earliest opportunity and an appropriate response action plan is implemented.

In the proposed regulation, compliance of authorised employers will be monitored through the assessment of pre-employment information and proposed risk management strategies. Where unsafe or inappropriate child employment plans have been identified during the pre-employment assessment, the Office of the Children’s Guardian will work with the employer to help them comply with the code of practice and achieve the best outcome for the child.

The Office of the Children’s Guardian assesses compliance with the code of practice through location visits that facilitate:

- contact with new employers
- observations of unusual or risky work environments
- checking on the employment of very young children and babies
- monitoring of long-term employment of children
- monitoring the employment of babies under 12 weeks
- routine checking
- monitoring location, possible physical or psychological risks.

7.8.1 Impact on stakeholders

Under the proposed amendments, employers will not only be required to identify risks to children, but will be required to prepare and submit their risk mitigation strategies. This is expected to reduce the turnaround times of Authority applications as the Children’s Guardian will be less likely to require further clarifying information from the employer.

7.9 Notification of illness and injury

There may be times when a child feels ill or has sustained an injury which is not noticeable, or the child displays symptoms of an illness and does not report it.

The proposed regulation requires an employer to act at the first signs of the child being unwell or injured so that there is a higher level of protection provided to the child through preventative measures.

7.10 Breaks

Currently the Regulation requires that an employer must make sure that each child is given a 10 minute rest break every hour, and a one hour rest break every four hours (CI 14(4)).

Feedback from employers is that the requirement of the 10 minute break every hour is inflexible. The reality is that the children have more breaks than the minimum 10 minute break time every hour. Feedback from children is that they also dislike this requirement. The Office of the Children’s Guardian recognises that a mandatory and set time can impact the flow of the child’s performance and increase the cost of the production.

Consultations with both children and employers suggested greater flexibility with the one hour mandatory break for children after four hours of work. The Office of the Children’s Guardian

believes there is merit in reducing the inflexibility of the provisions in the Regulation about meal and rest breaks.

In the proposed regulation, for children over the age of three years, the one hour break can be more flexibly applied, such that an employer provides breaks for a child, which, at a minimum, amounts to one hour for every four hours of work. For example, flexibility would allow a 15 minute break at the two hour mark and then 45 minutes at the four hour mark, similar to the breaks a child would get at school.

This flexibility would not apply to children under the age of three years who require greater breaks and opportunities away from the set of a production in accordance with their developmental needs.

7.10.1 Impact on stakeholders

With meal and rest breaks, an option could be that the provisions are given as broad guidelines with a provision in the code of practice which would state children over the age of three years will be given a break in accordance with their age and developmental requirements. In this way, the needs of individual children could be met more closely, while providing greater flexibility of scheduling activities.

Removal of this red tape removes a scheduling burden currently on employers. This removal also has the potential to assist children's workload by providing greater flexibility for productions to complete their work schedule on time and release the child without requesting any variations for extra time.

7.10.2 Issue for comment

- *Should employers be allowed to apply flexibility (within specified parameters) when providing breaks to children over the age of three, giving consideration to their age and workload?*

7.11 Hours and times of work

The code of practice has several provisions relating to:

- total hours of work per week
- total hours of work per day
- total hours of work on days of school attendance
- earliest start and latest finish times on working days
- work on nights immediately preceding school days
- shifts
- travel time
- rest breaks
- meal breaks.

Employers may request variations from the code of practice. Requests for variations received by the Office of the Children's Guardian frequently concern one or more of the interconnected sets of provisions regarding times of work. Many of the variation requests received have highlighted that the Regulation requires updating to reflect current practices within the industry.

Another area of concern in the Regulation is the separate specifications for times of work for film and television, shopping centre performances, still photography or other exhibitions; and theatrical performances (clauses 15 and 16). These reflect the traditional belief that theatrical performances are more demanding; however there is no evidence to suggest that a film or television work is any less demanding than theatrical performance. There will be some theatrical performances that will not be very demanding for a particular role the child is playing.

7.11.1 Employment cap

Clause 14(7) of the Regulation provides for an 8pm cap on the employment of a child when that child is employed over three consecutive days and attends school the following day. This clause causes great confusion when read alongside clause 14(6) which stipulates that a child is to work no later than 9pm if the following day the child attends school.

These clauses must also be read in conjunction with clause 14(3) which does not allow the employment of a child for more than 4 hours on any day which the child receives schooling.

It is quite rare, except for live performance, that a child over six years of age would work three consecutive nights after 8pm. Generally an employer has been able to work within the 9pm band where a child will be attending school the following day. If a variation has been required to extend this time period a variation has been applied for with a rationale as to why this extra time is required. The proposed regulation removes the 8pm cap when a child works three consecutive nights preceding a school day.

7.11.2 Impact on stakeholders

This removes red tape and compliance costs as a result of the extra scheduling burden on employers and reduces the confusion for employers in clause 14.

7.11.3 Age and work bandwidth

Two main clauses in the code of practice govern the maximum hours of work that a child can be employed – clause 15 provides for children working in entertainment and exhibition and clause 16 provides for children working in live performance such as musicals and theatrical productions. These two clauses provide for two different sets of age grouping aligned with specific time periods that these children can work.

Additionally clause 16 limits the days allowed for a child to work in live theatre, although the majority of children employed in live performance are, in the main, seasoned performers with many years of dance and performance classes and are well versed in the rigours of performing in shows which would normally finish by 11pm. A vast majority of the variation requests considered by the Office of the Children's Guardian are for an extension of hours to allow children in live performance to work until 11pm when the show would normally conclude.

In the proposed regulation, the extension and redefinition of the age and work bandwidth in clause 16 would:

- remove the confusion between different forms of performance for the child
- significantly reduce the amount of variations required by the live performance industry
- align the hours of work for live performance with the some of the general entertainment and exhibition requirements

- reduce an employer's compliance costs and reduce red tape due to the current restrictive scheduling requirements for live performance.

Employers would still be required to apply for a variation where the child is employed for more than four hours on a day that they attend school.

7.13.1 Impact on stakeholders

This removes red tape and compliance costs as a result of the extra scheduling burden on employers.

7.11.4 Issues for comment

- *Should the requirements around a child's age, and their hours of work in live performance, be more closely aligned with those of film, television etc?*

7.12 Supervision

Child supervision is a key factor in minimising the risk of harm or inappropriate behaviour towards a child in the employment environment. It is difficult to pinpoint which individuals will offend due to the high number of variables to take into consideration and the complexity of each situation.

A study of child sex offenders revealed that the most common method for gaining access to children was to organise time alone with the child, often with the parent's consent and usually after making friends with the child's parent. Offenders often used strategies such as gradual desensitisation over a period of time, resulting in an offence that in most cases occurred only once, and for duration of less than one hour.²

The level of supervision of both adult and child workers, the culture and structure of the work environment become important risk management tools. The higher the level of direct contact managers or directors have with their staff, the more they are able to observe behaviours and conduct, enabling them to minimise opportunities for offenders to harm a child.

In the proposed regulation there is the requirement that the nominated supervisor of the child must have the child in their view at all times for effective supervision.

7.12.1 Impact on stakeholders

Employers will need to make sure they can accommodate the supervisor of the child in the employment situation so that the child is in view of the supervisor at all times. In addition, employers will need to make sure that the necessary considerations for the supervisor's safety are taken into account.

7.13 NSW comparison with other jurisdictions

Each state and territory which has a regulation about the employment of children has its own code of practice. A comparison of these regulations is at Appendix 4.

² Smallbone S, and Wortley R (2001). Child Sexual Abuse: Offender Characteristics and Modus Operandi, *Australian Institute of Criminology*.

8. Review and evaluation

The proposed regulation is intended to commence by December 2015 with the Office of the Children's Guardian responsible for implementing and overseeing the proposed measures.

It is intended that the new Regulation would be reviewed by 2018, enabling the effective monitoring of its implementation to have occurred. An implementation plan has been developed and will be reviewed and updated as required. Within this implementation plan the Office of the Children's Guardian intends to provide resources for employers to help them in their compliance and to raise community awareness around the employment of children in prescribed industries.

APPENDIX 1: Relevant research

Work in the entertainment industry

Katherine Sand, the former General Secretary, International Federation of Actors (FIA), writes “the massive proliferation of broadcasting outlets and the internationalization of the media and entertainment industries have led to even more opportunities for children to seek and be given employment as performers”³. She then identifies several key elements for protecting child performers, including pay, licensing and permit systems, hours worked per day/year, educational provisions and requirements, moral oversight, health and safety, and also discusses what happens to child performers when they grow up.

Children want to work for a number of reasons, including gaining work experience, avoiding boredom, and earning money to buy consumer goods. The legislative framework is not directed towards restricting safe and positive employment of children. It also recognises the role of parents in ensuring the safety, welfare and wellbeing of their children and supporting their children’s learning and development in a variety of contexts and aims to assist parents in their role. It provides for co-operation between employers, parents/carers and the Children’s Guardian to promote the safety, welfare and well-being of children in certain types of work.

While industry practices have significantly improved over the past few years through the increased awareness regarding the mandatory code of practice, the Office of the Children’s Guardian regularly receives notifications where there is a high probability that children may be exposed to physical and/or emotional injury or harm, stresses associated with long hours under lights, being exposed to chemicals, arduous schedules, difficult weather conditions or adult themes and content.

The industry is also unique in that it employs babies, toddlers and younger school age children who are potentially more vulnerable. The temporary nature of the workplaces and staff; work often taking place outside of traditional 9 am to 5 pm work periods and in contexts not seen suitable for children (e.g. availability of alcohol, use of inappropriate language); and concerns about employers’ understanding of the educational, emotional and physical needs of children have always attracted special regulatory effort.

The situation of children and young people working in the entertainment industry has its own specific advantages and disadvantages in addition to those canvassed above.

As highlighted in a 2005 International Labour Organisation (ILO) report⁴, working in the entertainment industry or modelling can be an arduous process, involving interviews, auditions, rehearsals, and performances, which can all be very unsettling and stressful for young children. Early stardom and being in an environment where a lot of importance is placed on physical appearance can have significant implications for the child’s self-perception and self-confidence. This is evidenced by the fact that while some famous children go on to have acting careers or balanced lives as adults, others can exhibit a range of problems, including addiction, depression, and eating disorders.

³ Sand K. (2003). *Child performers working in the entertainment industry around the world: An analysis of the problems faced*. Working paper 186, page 3. International Labour Organisation, Geneva.

⁴ International Labour Organisation (2005). *Children working in cultural and artistic activities*. Geneva.

Recognising that child performers need particular care and protection legislation has been enacted around the world including countries such as Canada, various states across the USA (<http://www.dol.gov/whd/state/childentertain.htm>), India, Pakistan, New Zealand as well as some Australian states and territories. Recently the UK strengthened its laws around child performers in the light of sexual abuse revelations. The legislation with accompanying guidelines published by these countries highlight that many aspects of the workplace and work activities present risks that are potentially much higher for children than they would be for adults, due to factors such as the child's smaller physical size, lower tolerance to chemical hazards or temperature extremes, shorter attention span, and the lower appreciation child performers may have with respect to risks to their health and safety.

There is also recognition that parents have an important role to play and must be included in discussions about the roles and responsibilities of the various parties. The role of a parent is also crucial in ensuring the safety, welfare and wellbeing of their children and supporting their child's learning and development in a variety of contexts. However government intervention becomes important when parents:

- are generally unable to directly observe their children for all the time during which they are employed
- may face difficulties in obtaining sufficient information that would enable employment of the child to be safe
- may not be fully informed about the range of factors relevant to the welfare of their child at work and the implications for their learning and development
- may lack confidence or assertiveness to address issues of concern with employers.

While working in the entertainment industry can have serious negative consequences for some children, and especially for young children, every child is different and some children and young people have a natural talent and a strong drive for performing. Provided their safety, health and nutrition is not compromised, exposure of children and young people to well-designed and supportive work experiences in the entertainment industry could be beneficial for their development. It would be crucial, of course, to ensure those children and young people had a sound balance between work, play, education and family time.

The key is to make sure adequate measures are in place to protect the health and the physical and emotional safety of the children and to provide an environment conducive to their cognitive and socio-emotional development, in a flexible manner that takes into account the individual needs of each child.

The ILO report also articulated that having children employed in the entertainment industry "is both necessary and positively desirable in modern society. As long as human beings have been organizing and presenting entertainment to each other, children have been involved, not only because of their natural propensity to be entertaining and appealing to adults as well as to other children, but also because of the need, when telling any kind of story, to present a reality which inevitably includes them".

Experience with the administration of the Regulations

The Regulation is based on cooperation between employers, parents/carers, and the Children’s Guardian to promote the safety, welfare and well-being of children at work and their administration has generally involved very good cooperation by employers.

The Office of the Children’s Guardian has been monitoring the sectors since 2010 when the current children employment regulation was introduced. The following issues have been identified:

- large numbers of children are not being paid for work in these sectors and are not covered by the children’s employment regulation
- environmental risks specific to children are not always identified or understood
- inconsistent age limits and work bands creates confusion for all stakeholders.

The number and nature of employment Authorities issued

The number and nature of employment authorities issued over the last five years presents a fairly predictable picture, with most (80% during 2014) being for entertainment and exhibition, and a smaller amount for still photography, and none for door-to-door sales.

Table 4: Number of Authorities issued each year

Year	09-10	10-11	11-12	12-13	13-14
Entertainment and exhibition	145	153	124	140	146
Still photography	26	30	31	30	40
Door-to-door sales	0	0	0	0	0
Total	171	181	155	170	192

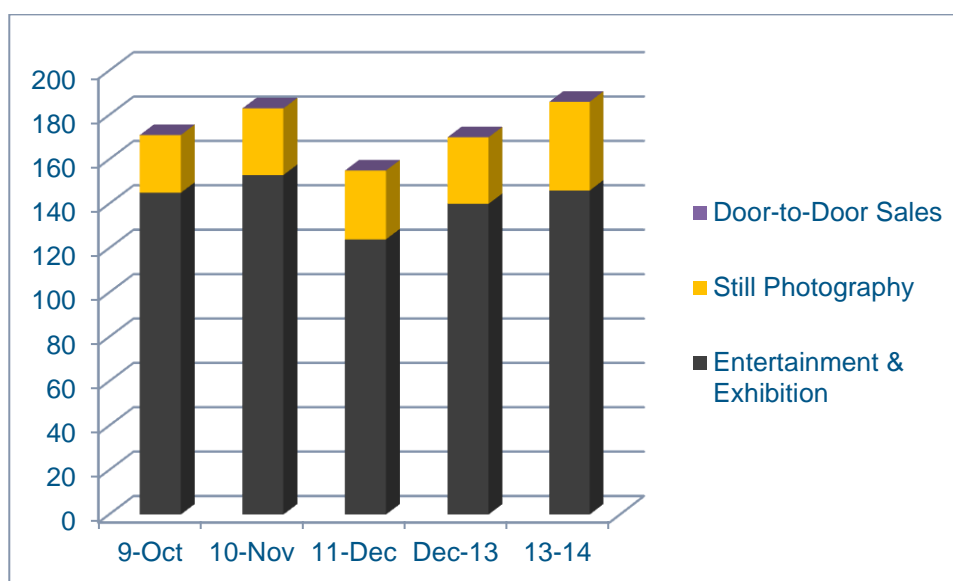


Table 5: Graphical representation of numbers of Authorities issued

Variations to the code of practice

The Office of the Children’s Guardian may approve variations for child employment plans that are outside the limitations of the code of practice. Variations are granted to employers who demonstrate that:

- every reasonable attempt has been made to adjust work requirements to comply with the code of practice
- the child’s welfare will not be compromised
- the child and the child’s parent have been consulted.

Recent experience has been that around 10% of productions require variations. When variations are examined in greater detail, as per the table below, it is observed that one third of theatre productions, around 10% of exhibitions, and around 15% of all film and TV productions require a variation from the code of practices. The Office of the Children’s Guardian works with employers who do not comply to increase their awareness of the legislation and minimise the risk of future breaches.

APPENDIX 2: Identified stakeholders

- Department of Education
- NSW Industrial Relations
- Workcover NSW
- Destination NSW
- Department of Family and Community Services
- Screen NSW
- Australian Communications & Media Authority
- Talentpay
- Media Entertainment & Arts Alliance
- Screen Producers Association of Australia
- Opera Australia
- Live Performance Australia
- Australian Commercial Media Photographers
- The Communications Council
- Musicians Union of Australia
- Australian Institute of Professional Photographers
- Australian Fashion Council
- Australian Film, Television and Radio School
- Shopping Centre Council of Australia

APPENDIX 3: Comparison of current regulations and proposed amendments

CONTENTS	Children and Young Persons (Care and Protection) (Child Employment) Regulation 2010	Proposed Children and Young Persons (Care and Protection) (Child Employment) Regulation 2015																																									
Definitions		<ul style="list-style-type: none"> • Performance activities includes modelling, promotional work, performance art, public speaking, public performance and any other similar activity. • Performer representative means a performer representative within the meaning of section 5 of the Entertainment Industry Act 2013. • Preparatory activities means activities connected to services rendered by a child, including rehearsals, wardrobe fittings, the making of sound recordings and publicity activities. • Regulated activity means an entertainment or exhibition, a performance that is recorded for use in a subsequent entertainment or exhibition, a still photographic session, a preparatory activity or door-to-door sales. • Student means a person currently enrolled in a tertiary course in film, television, radio, theatre or photography in a university or that is accredited by the Australian Skills Quality Authority. 																																									
Fees payable in respect of authorities	<p>Clause 8 prescribes the current fees:</p> <table border="1" data-bbox="389 914 1189 1283"> <thead> <tr> <th data-bbox="389 914 591 962">Authority type</th> <th colspan="2" data-bbox="598 914 864 962">12 month</th> <th colspan="2" data-bbox="871 914 1189 962">1 month</th> </tr> <tr> <td></td> <th data-bbox="598 967 730 1046">Standard fee</th> <th data-bbox="736 967 864 1046">25% discount</th> <th data-bbox="871 967 1003 1046">Standard fee</th> <th data-bbox="1010 967 1189 1046">25% discount</th> </tr> </thead> <tbody> <tr> <td data-bbox="389 1051 591 1134">Entertainment & exhibition</td> <td data-bbox="598 1051 730 1134">\$2,200</td> <td data-bbox="736 1051 864 1134">\$1,650</td> <td data-bbox="871 1051 1003 1134">\$1,100</td> <td data-bbox="1010 1051 1189 1134">\$825</td> </tr> <tr> <td data-bbox="389 1139 591 1222">Still photography</td> <td data-bbox="598 1139 730 1222">\$968</td> <td data-bbox="736 1139 864 1222">\$726</td> <td data-bbox="871 1139 1003 1222">\$484</td> <td data-bbox="1010 1139 1189 1222">\$363</td> </tr> <tr> <td data-bbox="389 1227 591 1283">Door-to-door</td> <td data-bbox="598 1227 730 1283">\$1,100</td> <td data-bbox="736 1227 864 1283">\$825</td> <td data-bbox="871 1227 1003 1283">\$550</td> <td data-bbox="1010 1227 1189 1283">\$412.50</td> </tr> </tbody> </table>	Authority type	12 month		1 month			Standard fee	25% discount	Standard fee	25% discount	Entertainment & exhibition	\$2,200	\$1,650	\$1,100	\$825	Still photography	\$968	\$726	\$484	\$363	Door-to-door	\$1,100	\$825	\$550	\$412.50	<p>Clause 130 proposed fees:</p> <table border="1" data-bbox="1330 914 2022 1283"> <thead> <tr> <th data-bbox="1330 914 1576 962">Authority type</th> <th data-bbox="1583 914 1727 962">12 months</th> <th data-bbox="1733 914 1877 962">3 months</th> <th data-bbox="1883 914 2022 962">1 week</th> </tr> </thead> <tbody> <tr> <td data-bbox="1330 967 1576 1134">Entertainment, exhibition, performance</td> <td data-bbox="1583 967 1727 1134">\$2,440</td> <td data-bbox="1733 967 1877 1134">\$1,830</td> <td data-bbox="1883 967 2022 1134">\$200</td> </tr> <tr> <td data-bbox="1330 1139 1576 1246">Still photography sessions or door-to-door sales</td> <td data-bbox="1583 1139 1727 1246">\$1,075</td> <td data-bbox="1733 1139 1877 1246">\$806</td> <td data-bbox="1883 1139 2022 1246">\$100</td> </tr> <tr> <td data-bbox="1330 1251 1576 1283">Students</td> <td data-bbox="1583 1251 1727 1283">N/A</td> <td data-bbox="1733 1251 1877 1283">N/A</td> <td data-bbox="1883 1251 2022 1283">N/A</td> </tr> </tbody> </table>	Authority type	12 months	3 months	1 week	Entertainment, exhibition, performance	\$2,440	\$1,830	\$200	Still photography sessions or door-to-door sales	\$1,075	\$806	\$100	Students	N/A	N/A	N/A
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Still photography sessions or door-to-door sales	\$1,075	\$806	\$100																																								
Students	N/A	N/A	N/A																																								

Performer representatives	N/A	<ul style="list-style-type: none"> • Must comply with provisions in Part 2 of the Regulation pertaining to 'Hours of Work'. • Must record the employer's Authority number applying to each occasion of a child's employment. • Maintain employment records for 6 years. • Provide employment records to the Children's Guardian if requested in writing.
Penalty provisions	N/A	Penalty provisions listed in the proposed Regulation proportionate to the breach.
Schedule 1 code of conduct		<ul style="list-style-type: none"> • Insert new clause called Code of Conduct which provides that it is a condition of an employer's authority to provide a Code of Conduct to each adult where children are employed and that this Code of Conduct is explained to each adult. Also that the Code of conduct is child focused and encompasses child safe practices. • The Office of the Children's Guardian would issue guidance on this.
Record of employment	<p>Schedule 1, Part 1 clause 1 provides:</p> <ul style="list-style-type: none"> • that an employer must ensure that a record is kept for each child employed • the particulars which must be included in each record • the record must be kept available for inspection at the business premises of the employer. 	<p>Proposal includes:</p> <ul style="list-style-type: none"> • change of heading to 'Record keeping' • employers to be required to keep records for all children engaged to provide a service, whether paid or unpaid • the record to be kept for 6 years • the Children's Guardian may issue a notice to compel an employer to provide records and/or information specified • insert provision for an employer to furnish information requested by an authorised officer regarding unauthorised employment of a child • that the employer keeps a copy of the incident record for a period of 3 years.
Incident register	N/A	Insert provision that employer is to keep an incident register , that the employer is to record particulars of any incident and that a copy of that record is to be forwarded to the Children's Guardian within 72 hours of the incident occurring.

Notice of work location	<p>Current title is Notice of work location</p> <ul style="list-style-type: none"> Schedule 1, part 1, clause 2(2)(b) provides that the strategies that the employer proposes to ensure compliance with this code. 	<p>Proposed title: Notice of work location and risk management strategies</p> <p>Proposed changes:</p> <ul style="list-style-type: none"> Schedule 1, part 1, clause 5(2)(b) extend to: the strategies that the employer proposes to minimise the risks identified in clause 5(2)(a) in a form prescribed by the Office of the Children's Guardian.
Notification of illness or injury	<p>Clause 10 provides for the notification of illness or injury by an employer in the event of a child becoming ill or being injured, the child's employer must ensure that at least one parent of the child is immediately notified of that fact.</p>	<p>Proposed to reword the clause to include if a child "appears or reports" to be feeling ill or injured.</p>
Parental contact	<p>Currently in Schedule 1, Part 1 clause 11.</p>	<p>Clause to be moved to an earlier section to give it more prominence.</p>
Calculation of employment		<p>Proposal to insert that preparatory activities applies to the calculation of employment.</p>
General limitations on hours of work	<p>Currently clause 14(4) stipulates that an employer must ensure that each child is given a) a 10 minute rest every hour and b) a 1 hour rest break every 4 hours.</p>	<p>Amend the clause to stipulate that a child is to receive regular rest breaks as appropriate to the needs of the child and their workload during their employment and insert a clause which allows for a rest break which amounts to an hour within the four hour period.</p>
General limitations on the hours of work	<p>Schedule 1, Part 1 clause 14(5) stipulates that an employer must ensure that no child starts work less than 12 hours after the child has previously finished work, whether for the same or for any other employer.</p>	<p>Delete : 'whether for the same or for any other employer'.</p>
General limitations on the hours of work	<p>Schedule 1, Part 1 clause 14(7) states that an employer must not employ a child later than 8:00pm on 3 consecutive days if the day following each day on which the child is employed is a day on which the child is to receive schooling.</p>	<p>Delete clause</p>

Limitations on the hours of work - live entertainment	Schedule 1, Part 1 clause 16(2) provides the following table:				Proposed hours of work for live entertainment			
	Age of child	Maximum days per week	Hours during which child may be employed	Maximum hours per day	Age of child	Max days per week	Hours during which the child may be employed	Maximum hours per day
	Under 6 months	1 day	9.00am–6.00pm	4 hours	Under 6 months	1 day	6:00 am- 6:00pm	4 hours
	6 months and under 2 years	2 days	9.00am–6.00pm	4 hours	6 months to under 3 years	2 days	6:00 am- 6:00pm	4 hours
	2 years and under 6 years	3 days	9.00am–6.00pm	4 hours	Over 3 years and under 6 years	4 days	6:00 am- 9:00pm	4 hours
	6 years and under 10 years	4 days	9.00am–10.00pm	4 hours	Over 6 years and under 8 years	4 days	6:00am – 10:00pm	6 hours
	10 years and under 12 years	4 days	9.00am–11.00pm	6 hours	Over 8 years and under 15 years	4 days	6:00 am- 11:00pm	8 hours
	12 years and under 15 years	4 days	9.00am–11.00pm	8 hours				
Supervision					The child must be in view of the person supervising at all times			

APPENDIX 4: Comparison of NSW child employment regulations to other jurisdictions

	New South Wales	Victoria	South Australia	Queensland	Northern Territory	Tasmania	Western Australia	ACT
Code of practice	Yes	Yes	No	Yes	No	No	Yes	Yes
Scope of regulation ⁵	Currently only covers children in paid employment in the entertainment, exhibition, still photography, and door-to-door sales industries. Proposed to be extended to cover children unpaid when working with children being paid for their services.	Covers children under 15 years who are employed (paid and unpaid) in entertainment and door-to-door sales	As at 1 October 2014, there is no specific legislation in South Australia governing the employment of children. The <i>Education Act 1972 (SA)</i> prohibits the employment of a child of compulsory school age during the hours where they would ordinarily be attending school.	Covers all children under 18 years of age who are paid and unpaid. Work covered by the Act and Regulations includes work under a contract for labour only, or substantially for labour only, as well as unpaid work. The Code has specifics covering children in entertainment and door-to-	Not specific to children under 18 years in entertainment. A child under the age of 15 years must not be required to work between the hours of 10:00pm and 6:00am. It is also an offence for a parent to permit their child to perform any of the work.	Covers children who are paid and unpaid. Public entertainment is defined to include any entertainment open to the public, whether or not an admission is charged and includes both live and recorded entertainment that is broadcast on radio or television.	General Code of Practice covering all children less than 18 years of age who are paid and unpaid (deemed to be an employee). Whether the child is actually an employee, independent contractor or volunteer in the strict legal sense is irrelevant.	Covers all children who are paid and unpaid. If they are engaged under a contract for services, whether or not the child is paid, and irrespective of whether the employer's business is carried on for profit.

⁵ For more information on how each jurisdiction regulates children's employment see <http://www.artslaw.com.au/info-sheets/info-sheet/children-in-the-creative-process-information-for-artists-and-arts-organisat/>

	New South Wales	Victoria	South Australia	Queensland	Northern Territory	Tasmania	Western Australia	ACT
				door sales.				
Is an Authority to employ a child required?	The employers is required to obtain an Authority to employ children	In order to employ a child under the age of 15 years (other than in a family business or under a work experience arrangement), a "Child Employment Permit" for the specific child and the written consent of the parent or guardian of the child is required.	No	No, parental consent only is required	No	No	Permit is required for children under 15 years in entertainment	No, a child or young person under 15 may be employed for up to 10 hours a week. If an employer wishes to employ a child or young person under the age of 15 for more than 10 hours a week, they need to notify the ACT Office for Children Youth and Family Support and obtain approval
Is there a discount given when applying for an Authority	Currently there is a discount however it is proposed that this is no longer	N/A	N/A	N/A	N/A	N/A	N/A	N/A

	New South Wales	Victoria	South Australia	Queensland	Northern Territory	Tasmania	Western Australia	ACT
	available							
Work hours for live entertainment	There is a maximum number of days, hours and hours per day dependent upon the age of the child. Proposed to change bandwidth.	There are maximum number of days, hours and hours per day dependent upon the age of the child.	N/A, Generally there is no age set for when a child can start work. There are limits on the type of work children can do	There is a maximum number of days, hours and hours per day dependent upon the age of the child.	N/A, but generally there is no age set for when a child can start work. If the child is under 15, they cannot work between 10pm and 6am	N/A. Generally, There is no age set for when a child can start work. There are limits to the type of work a child can do when performing in public and selling things in public places.	Not specific to entertainment. General statement As long as the work does not prevent school attendance, children of any age can perform professionally as an actor, musician or in a TV commercial	The <i>Children and Young People (Employment) Standards 2011 (No 1)</i> limit the number of hours a young child can work each day. Children between 0 and not yet 4 may work for up to 3 hours a day; Children from 4 and not yet 12 may work for up to 4 hours a day; and Young people from 12 and not yet 15 may work for up to 6 hours a day.
Mandatory	For all children	For babies under	N/A	For babies	N/A	N/A	N/A	N/A

	New South Wales	Victoria	South Australia	Queensland	Northern Territory	Tasmania	Western Australia	ACT
requirement of a registered nurse in addition to parent	under 3 years	12 weeks of age employed for more than one hour per day. Children over 12 weeks and under 6 years supervisor can include registered nurse, parent/guardian or person nominated by employer or authorised by parent or person with early childhood qualifications		under 12 weeks of age employed for more than one hour per day.				
Rest breaks (for those listed as N/A this provision may be covered under other legislative provisions.)	Currently 10 minutes every hour and 1 hour every 4 hours. Proposal to be more flexible eg a 1 hour break can consist of 2x30 minutes within the 4 hour period and also extend to "or as directed	10 minutes every hour and 45 minutes every 5 hours.	N/A	1 hour after the end of the fourth hour and 10 minute break for children under 13 years	N/A	N/A	10 minute break every hour and a one hour break every four hours.	N/A

	New South Wales	Victoria	South Australia	Queensland	Northern Territory	Tasmania	Western Australia	ACT
	by OCG” for the 10 minute breaks required every hour							
Insert incident record requirements (for those listed as N/A this provision may be covered under other legislative provisions.)	Currently silent on this. Proposal to mirror requirements under WH&S Act	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Children who are unwell (for those listed as N/A this provision may be covered under other legislative provisions.)	Requires an employer to immediately notify at least one parent. Proposal to extend to cease the work of the child immediately.	An employer is not to employ a child who is ill, unfit for work or carrying or to have been exposed to an infectious disease which poses a risk to the health of others at the workplace and if a child becomes ill or injured while at work the employer must immediately	N/A	An employer is not to employ a child who is ill, unfit for work or carrying or to have been exposed to a contagious medical condition which poses a risk to the health of others at the workplace	N/A	N/A	N/A	N/A

	New South Wales	Victoria	South Australia	Queensland	Northern Territory	Tasmania	Western Australia	ACT
		notify one of the child's parents/guardians						
Pre-employment activity	Currently covers rehearsals, wardrobe etc	No	No	No	No	No	No	No
Specify detail and manner of employment record to be kept	Currently specifics in the regulation, proposal for OCG to provide requirements as to the detail and manner	Specific about record keeping requirements but not manner	N/A	Specific about record keeping requirements but not manner	N/A	N/A	N/A	N/A
Record keeping and retention	No time frame for the retention of records specified. Proposal to require records to be kept for 6 years. Record to be kept available for inspection at the business premises of the employer	No time frame for the retention of records specified. Employer to keep a copy of child's employment permit at the place where the child is employed or be able to produce a copy to a child employment officer on request	N/A	To keep for 2 years at the workplace of the employer				

	New South Wales	Victoria	South Australia	Queensland	Northern Territory	Tasmania	Western Australia	ACT
	specified.							
8pm cap when child works over 3 consecutive days	Proposal to delete this as it is covered by a 9pm finish for children when working on a school day in another clause of the regulation.	N/A, only consider 9pm finish for children when working on a school day	N/A	N/A, only consider 9pm finish for children when working on a school day	N/A	N/A	N/A	N/A
Code of Conduct	Currently not included. Proposal to include a Code of Conduct for employers around ensuring a child safe environment.			Employer must give appropriate induction to all children working for them				