



nsw commission for  
children & young people

# REGULATORY IMPACT STATEMENT

Commission for Children and Young People  
Regulation 2008

## **REGULATORY IMPACT STATEMENT**

**TITLE OF REGULATORY PROPOSAL:**      **Commission for Children and  
Young People Regulation 2008**

**PROPONENT:**                                      **NSW Commission for Children  
and Young People**

**RESPONSIBLE MINISTER:**                                      **Graham West  
Minister for Youth**

**RELEVANT ACT:**                                      **Commission for Children and  
Young People Act 1998**

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## **REGULATORY IMPACT STATEMENT**

### **Commission for Children and Young People Regulation 2008**

#### **1. INTRODUCTION**

The *Commission for Children and Young People Act 1998* provides for a regulation covering the issue of certificates to self-employed persons in child-related employment to show that they are not prohibited from engaging in that employment. The Act provides for the regulation to set compliance requirements for the certification scheme. The proposed *Commission for Children and Young People Regulation 2008* requires self employed people engaged in child-related employment to obtain a certificate to show that they are not prohibited from child-related employment.

This regulatory impact statement sets out the objectives of the regulation. It will evaluate firstly the alternatives to regulation, and secondly, the alternative options for implementing the regulation.

##### **1.1 The current framework for child-related employment**

The *Commission for Children and Young People Act 1998* protects children by prohibiting certain persons from being involved in child-related employment, and by requiring employers who offer child-related employment to seek a background check on preferred applicants for primary child-related employment. This helps employers to select people who are suitable for child-related employment.

A person who has been convicted of a serious sex offence, serious violence against children, or who is on the Child Protection Register is prohibited from engaging in child-related employment, whether as a self employed person, a paid employee or a volunteer. There are penalties for breaching this prohibition.

People who enter primary child-related employment are subject to the Working With Children background check. This check is designed to assist employers determine the suitability of applicants for child-related employment. This check includes relevant criminal records, so that any prohibited persons applying for child-related employment are revealed through the Working With Children background check.

As self employed people do not have an employer, the Working With Children background check is not available for them. This means that people engaging them do not know whether the person is prohibited from child-related employment.

## **1.2 History of legislation**

During 2004, there was a review of the *Commission for Children and Young People Act 1998* and the *Child Protection (Prohibited Employment) Act 1998*. The review drew on research findings as well as on oral and written submissions from, and consultations with, a wide range of interested parties. Contributions were made by 384 organisations and individuals including 255 children and young people.

The Review canvassed opinions on the regulation of self-employed people in child-related employment, amongst other issues. One of the recommendations of the review was that the Act "be amended to require self-employed people in child-related employment to display a certificate verifying that they are not a prohibited person..."<sup>1</sup>

This finding is consistent with the spirit and intention of the *Commission for Children and Young People Act 1998*, to promote the interests, safety and welfare of children and to inform the community about the interests of children and young people.

The Review's recommendation was taken up by the *Commission for Children and Young People Amendment Act 2005*. This Act provides that regulations may be made with respect to a certification scheme for self-employed persons.

## **1.3 Objectives of regulatory proposal**

The proposed regulation will make provisions for a scheme whereby self-employed persons obtain a certificate to demonstrate they are not a "prohibited person" for the purposes of child-related employment. To receive a certificate the self employed person will consent to a check of their criminal records. Any person who is determined to be a prohibited person will not receive a certificate and will not be able to engage in child-related employment.

The regulation promotes the safety and welfare of children by preventing prohibited persons from engaging in child-related employment.

The proposed scheme promotes compliance with the Act through regulating the use of certificates, as well as improved public awareness. The regulation will require that:

- Certificates are visibly displayed in the place of work.
- Certificates be used only by the person to whom it was issued,
- Self employed people will be obliged to obtain the certificate.
- The certificate may not be used other than as set out in the Act and Regulation.

The regulation establishes offences for failing to obtain a certificate and for improper use of a certificate.

The regulation sets a fee for applications for a certificate.

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<sup>1</sup> *Review of the Commission for Children and Young People Act 1998 and the Child Protection (Prohibited Employment) Act 1998*, November 2004, page 67.

## **2. REGULATORY APPROACH**

### **2.1 Why regulate**

The objectives of regulating child-related employment as set out by the (then) Minister for Community Services in her 1998 Second Reading Speech, are to create a scheme that gives paramount consideration to the welfare of children and young people and their protection from child abuse by:

- prohibiting people with convictions for certain offences from applying for or working in positions of child-related employment; and
- establishing a screening process for child-related employment.

Together these policy objectives received bipartisan support after a long period of consultation.<sup>2</sup> The Working With Children Check established under this legislation has strong community support.

Those who made submissions to the *Review* in 2004 were unanimous in the view that the principles, objectives and other directives expressed in the legislation remain valid.<sup>3</sup> Included in these principles is that regulation of child-related employment is in the best interests of children to minimise the risk of harm to children in the workplace.

### **2.2 User Fees**

The rationale for charging a fee is to meet the cost of providing the service, rather than to generate profits. Charging fees for cost-recovery of service provision is consistent with a number of government services and is arguably the norm for records delivery, certification and licensing in both the public and private sector.

There are a number of examples of user fees for comparable services. Queensland, Victoria and Western Australia all provide Working With Children checks on a user-pays basis. (Fees range between \$40 and \$70 for a card that must be renewed after two or three years.) NSW Police charge fees for a National Criminal History Record Check for visa, adoption, paid employment or licensing purposes. (Name and date of birth check costs \$52; name, date of birth and fingerprint check costs \$175.) Many professions, including teaching and nursing, require registration and charge fees for registration.

The *Review* concluded that it is reasonable to charge a fee for issuing a certificate to self-employed persons. It was felt that this would be accepted as a legitimate cost of employment, analogous to providing an academic transcript or requiring a National Criminal History Record Check (NCHRC) for employment purposes or professional registration purposes.

The NSW Commission for Children and Young People is a relatively small, independent body funded by the NSW Government. The NSW Commission for Children and Young People is unable, within its limited resources and budget,

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<sup>2</sup> Op. Cit. pgs 17-18.

<sup>3</sup> Op. Cit. pg 19

to fund an expansion of services to the self-employed sector in the absence of charging user fees.

NSW Parliament passed legislation allowing for the charging of a fee for a self employed certificate in 2008. Details of the initial proposed fee and further discussion is considered below in section 3.2.

## **2.3 Alternative Options to regulation**

### 2.3.1 Do Nothing

Doing nothing means not passing a regulation and not issuing certificates to self employed people in child-related employment.

There will be no scheme in place to monitor compliance of the self-employed, nor any scheme to enable the self-employed to demonstrate to prospective clients that they are not prohibited persons.

#### *Costs of Retaining the Status Quo*

- Potential social costs to children in not minimising the risk of harm to children in the workplace where a gap is recognised.
- Insufficient deterrent to prohibited persons from seeking to engage illegally in self-employed child-related employment.
- Social costs in public perception that the current regulatory framework of child-related employment does not promote compliance amongst the self-employed. Particularly given the *Review's* finding that the self-employed in child employment should also be regulated, there may be negative perceptions if this issue is not addressed.
- Inconsistent approach to regulation of working with children.
- The self-employed in the sector are at an employment disadvantage, in that they are unable to provide certified assurance to prospective clients that they are not prohibited persons. This may impact negatively on the ability for the self-employed to work in this sector.
- Obligations fall on those engaging the services of the self-employed to try and ensure that a child-related self-employed worker is not a prohibited person. Such obligations, particularly on parents, would be onerous or extremely difficult to meet.

#### *Benefits of Retaining the Status Quo*

- Some self-employed people could argue that they are free of any legal requirement to comply with certification and free from obligations to pay for this service.
- No increased costs, regulations or obligations on the self-employed to continue work, or enter work, in child-related areas.
- No cost implications, economic or organisational, for agencies such as the NSW Commission for Children and Young People, or partnering agencies, to implement and maintain a new certification scheme.

#### *Discussion*

The social costs of doing nothing, and of not acting to include the self-employed in the current compliance framework, outweigh the benefits.

### 2.3.2 Develop a Voluntary Certification Scheme

Another alternative would be to implement the service on a voluntary basis. This option could allow the NSW Commission for Children and Young People to inform the self-employed sector about good practice, and to set a measure of guidance to both the self-employed and to those engaging the services of the self-employed. If the certification scheme provides an additional comfort level to those who engage the services of the self-employed, it will become a competitive advantage in the sector and in time could become a practical requirement for those seeking employment in the sector. It is feasible that in the long term, a high level of impact is reached through a voluntary scheme. It is unknown if, and when, a significant impact will be realised. A voluntary scheme would have the benefit of not imposing a requirement on any self-employed person who desired to work in the field of child-related employment. However a fee would still need to be charged for the certificates.

If the main objective of the regulation was to provide a service to the self-employed in this field of work, and to enable the self-employed to compete on a par with employees, this option might be useful.

However, the main objectives in this regard are the safety and welfare of children, and as such a voluntary scheme does not offer the same degree of monitoring and compliance as a mandatory scheme, or a system of compliance in a regulated environment. In particular, there will be less deterrent to prohibited persons who might seek employment in the sector, contrary to the law, should it be perceived that offences will not be detected.

The cost to the NSW Commission for Children and Young People, or to the self-employed if full cost recovery is applied, would likely be greater, as the per-certificate cost will be higher if few people apply for a certificate.

#### *Discussion*

Most of the social costs as noted in 2.3.1 remain. A voluntary scheme will not meet the primary objectives of the legislation and is not a viable alternative.

### 2.3.3 Compulsory Certification

The current proposal is to require self employed people to demonstrate through this certificate, that they are not prohibited from child-related employment. Such a certificate will be a prerequisite for engaging in child-related employment.

#### *Benefits of Regulation*

- Reduce the gaps that currently exist between persons employed by an employer and self-employed persons engaged in child-related employment.
- Improve the regulatory framework, and compliance systems that seek to minimise the risk of harm to children in the workplace.

- Deter prohibited persons from seeking child-related employment in the unregulated self-employed sector.
- Provide critical information to those that engage the services of the self-employed in child-related employment, including parents.
- Address shortcomings identified in the Review of the legislation.
- Further the intentions and objectives of the enabling Act.
- Raise awareness about child-safe practices in the self-employed sector.
- Potential economic benefits to the self-employed. The certification scheme may level the playing field for the self-employed.

#### *Costs of Regulation*

- Economic costs to the self-employed. The user fee is initially proposed at \$75.
- The net economic cost to the self-employed will be lower, if any, as the fee should be a legitimate tax deductible expense.<sup>4</sup>
- Some self-employed people may feel unhappy at having a legal obligation to procure a service that they must pay for, in order to continue (or enter) into work that they may currently undertake without such obligations.
- Costs to the NSW Commission for Children and Young People in administering and implementing the scheme are not expected to be unreasonable or excessive (to either end users or agencies), given that users will pay for the service.

#### *Discussion*

A more detailed analysis of costs and benefits (including economic costs) of the proposed scheme is in section 4 below.

Regulation offers many benefits. It furthers the aims and intentions of the Act by providing a mechanism for including a group of workers who have, until now, been excluded on account of lacking an appropriate administrative mechanism.

It is considered that regulation is the most suitable option to meet the objectives of the NSW Commission for Children and Young People's legislation. The social benefits outweigh a reasonable economic cost.

### **3. THE PROPOSED REGULATION**

#### **3.1 Summary of the proposed Regulation**

The Regulation will require self-employed persons to hold a valid child-related employment certificate if they propose to engage in child-related employment. Self-employed persons may apply to the NSW Commission for Children and Young People for a certificate (via their local NSW Police Station), in such form

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<sup>4</sup> The Australian Tax Office has informally confirmed that this fee is a legitimate business expense. Given compatible deductible fees, there is little reason to expect that this will not be the situation.

as is approved from time to time by the NSW Commission for Children and Young People. The NSW Commission for Children and Young People is responsible for issuing a child-related employment certificate in which it is certified that the person is not a prohibited person if the NSW Commission for Children and Young People is satisfied that the applicant is not a prohibited person. The NSW Commission for Children and Young People will charge a fee for applying for the certificate. The certificate remains in force for 3 years from date of issue. A self-employed person who engages in child-related employment must ensure that the certificate is displayed at their place of work, or is produced for inspection by those seeking to engage the person if they do not have a fixed place of work. Penalties apply for failing to obtain a certificate, display or produce the certificate, or for fraudulent use of a certificate.

### **3.2 Proposed Fee**

The initial fee proposed is \$75 per certificate. The certificate remains valid for a three year period. This fee will allow for estimated cost-recovery of recurrent costs over a three year period. Cost-recovery may be sooner or only be possible over the longer term if take up is larger or smaller, respectively, than estimated. Given the lack of regulation of the self-employed, it is difficult to accurately assess the number of self-employed who presently engage in child-related employment in NSW. The NSW Commission for Children and Young People will incur start up costs in excess of \$100,000 to establish the new scheme, which may not be recovered in the first three years. These relate to communicating the new regulations to the public and to IT costs in establishing the system. While the proposed fee aims to cover recurrent costs, the fee charged is also based on an assessment of reasonable expenses to pass on to the end-user in the current context.

### **3.3 Alternative Options for Implementing the Regulation**

There are some requirements that any feasible option needs to meet:

- The certification system must include adequate checks against fraud and forgery, including fraud-free certificates, and ability to provide adequate verification of identity.
- Users of the system need to be able to check for updated information regarding the ongoing status of applicants.
- Any system should be accompanied by a public education campaign, making self-employed persons aware of new obligations, and those engaging the services of the self-employed aware of their entitlements to see certification.

The NSW Commission for Children and Young People investigated a few alternatives that relied primarily on it to develop a system for certification, or in conjunction with partnered Approved Screening Agencies. All of these options were rejected as costs were prohibitive and these proposals could not meet the concerns around adequate identity verification.

### **3.4 Preferred Delivery Route**

The proposed system relies on established links between NSW Police, CrimTrac and the NSW Commission for Children and Young People.

This option utilises existing successful procedures for ensuring security and integrity of the system.

#### *Benefits:*

- Utilise existing procedures, systems and resources for verification of identity, fraud-proof certification, and ensuring security integrity of the system.
- Relevant “expert” agencies and tested systems handle issues of security and identity verification procedures.
- NSW Police currently has extended network of locations for identity verification. Any current or future system deemed acceptable for NSW Police record checking is suitable for the NSW Commission for Children and Young People.
- Records, procedures, and administration regarding certification scheme remains centralised at the NSW Commission for Children and Young People.
- Implementation costs and ongoing costs reduced by leveraging existing large systems.
- Established pricing systems for several components of the scheme.

#### *Costs:*

- Planning and implementation burden and costs not restricted to one agency. While economic costs can be compensated fairly simply, (such as IT implementation costs, or certificate processing costs) other organisational costs may be more difficult to quantify or anticipate.
- Additional demand on CrimTrac, NSW Police Criminal Records Branch, NSW Police Stations covered by their portion of the overall fee.
- Control of ongoing costs not centralised by the NSW Commission for Children and Young People, and ongoing costs to be passed on to end users not in the NSW Commission for Children and Young People’s control. Several cost components determined by partner agencies such as NSW Police.

#### *Discussion*

Pursuing a self-certification scheme that relies on existing systems in place for criminal record checking and identity verification with NSW Police is the most cost effective route that also satisfies the security requirements for the scheme. There are also well-established price points for several components that facilitate assessment of costs and ensures delivery at reasonable expenses. This option was pursued at length in working group meetings with NSW Police.

## **4. IMPACTS OF THE PROPOSED REGULATION**

### **4.1 Features of the Certification Scheme**

A number of further options for detailed implementation were considered with NSW Police and compared for cost and operational effectiveness. The implementation program costed here was discussed from an all of government approach, with due consideration given not only to financial cost, but also to administrative effectiveness, including organisational responsibilities and capacities.

Key features of the scheme are:

- The use of a modified version of the current National Criminal History Records Check (NCHRC) application form.
- The use of a modified version of the current NCHRC certificate maintaining all anti fraud mechanisms.
- Lodgement point for applications the same as for NSW Police-issued NCHRC certificates.
- CrimTrac undertakes all criminal record checks.
- Data is exchanged between NSW Police and the NSW Commission for Children and Young People in a secure form.
- The NSW Commission for Children and Young People is responsible for processing the bulk of the application, data and certificate.
- The NSW Commission for Children and Young People is responsible for developing and maintaining a web-face interface for ongoing verification of continued validity of certificates.

### **4.2 Implementation Cost**

The following cost estimate may be subject to minor changes, but key cost elements are unlikely to vary.

#### 4.2.1 Economic costs

The recurrent costs are estimated at approximately \$75 per certificate over a three year period. This estimate assumes that around 5000 certificates are issued each year for a three year period.

The main cost components are:

- NSW Police costs: CrimTrac processing fees and NSW Police administration fees.
- Personnel costs (dedicated and support staff and on costs).
- IT development costs – data base, links and web interface.
- Audit and compliance costs.
- Mail and certificate costs.

Additional costs of approximately \$100,000 for a public information campaign and further web development costs have not been included in the above recurrent costs. These costs will be absorbed by the NSW Commission for Children and Young People if necessary.

#### 4.2.2 Organisational Costs

Other costs include the organisational costs involved in planning and investigating the certification scheme. These costs have been incurred, primarily by the NSW Commission for Children and Young People and NSW Police, and remain costs regardless of implementation of the Regulation.

Costs relating to administration, resource allocation and compliance should all be adequately quantified in the costing above, both for the NSW Commission for Children and Young People and within fees paid to NSW Police.

### **4.3 Distribution of Impact**

Costs are borne primarily by the end-user and the NSW Commission for Children and Young People. People who are self-employed in child-related employment pay the fee. This fee is set on a cost-recovery basis.

For certificate holders this up-front expense can be regarded as a tax deductible work expense, not a long-term cost. The expense is believed to be reasonable for the service.

The NSW Commission for Children and Young People will, in the short-term, bear the expenses of establishing the system. The NSW Commission for Children and Young People will recoup most of these costs over time, with full cost recovery in the medium-term. The NSW Commission for Children and Young People takes the impact of all risks for costs, given that actual take up is an unknown quantity. The NSW Commission for Children and Young People will also absorb additional start-up costs. The extent of costs absorbed by the NSW Commission for Children and Young People will vary depending on actual numbers of self-employed in child-related employment in NSW.

The NSW Police costs are per-certificate transaction costs, so this agency should have full cost recovery and minimal risk.

The distribution of benefits will be shared between the children who are served by the regulation, the community that supports the principles of the regulation, and the self-employed who stand to gain from increased acceptance in the sector. Some self-employed may benefit directly by increased employment opportunities.

## **5. CONSULTATION PROGRAM**

NSW Police was consulted frequently during the drafting of the regulation, with particular consideration to the options for implementing a proposed scheme. The NSW Commission for Children and Young People and NSW Police established a steering committee for this purpose. A number of other organisations were consulted, formally or informally, with regard either to the drafting of the regulation or aspects of implementing the proposed regulation, including:

- The Office of the Parliamentary Counsel
- Attorney General's Department of NSW
- Australia Post
- Australian Tax Office

Copies of this RIS and the proposed Regulation will be forwarded to:

- NSW Police
- Australian Tax Office
- Attorney General's Department of NSW
- Department of Education and Training

A copy of this Regulatory Impact Statement will be posted on the NSW Commission for Children and Young People's website at the commencement of the public exhibition period, at [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au)

A notice will be published in the Gazette and in the Sydney Morning Herald advising interested parties to visit the website to view the proposed regulation. The proposed regulation and this Regulatory Impact Statement will also be available for viewing in business hours during the consultation period at the office of the NSW Commission for Children and Young People.

Submissions about the proposed Regulation can be made to:

Regulation  
NSW Commission for Children and Young People  
Level 2, 407 Elizabeth Street  
SURRY HILLS NSW 2010  
or  
[regulation@kids.nsw.gov.au](mailto:regulation@kids.nsw.gov.au)

## **6. CONCLUSION**

The objective of the proposed regulation is to provide for a scheme that certifies a self employed person is not prohibited from child-related employment. This Regulatory Impact Statement has established that there is support for a scheme to verify compliance by self employed people with statutory provisions that exclude certain offenders from child-related employment. The Regulation furthers the aims and intent of the enabling Act, and promotes compliance with the Act by people who work with children.

The economic costs of the certification scheme are not unreasonable, in terms of implementation costs and ongoing costs. The costs are borne largely by the end-user, in that the scheme is based on cost recovery in the medium term. However the self-employed will be able to reclaim expenses as legitimate tax deductible expenses. The NSW Commission for Children and Young People is likely to incur reasonable costs in the short term. The scheme may well have economic benefits in the sector by encouraging work opportunities for the self-employed. However, the main benefits derived from the Regulation are social

benefits in terms of promoting the safety and well-being of children and young people in the workplace.