



A Guide to Child Employment in NSW

Regulation including
Code of Practice
2005

**Film, Television, Advertising, Theatre,
Still Photography, Modelling,
Shopping Centre Performances, Door-to-Door Sales**

**A Guide to Child Employment in NSW
Regulation including Code of Practice**

Contents

1. Background.....	1
1.1 Purpose of these Guidelines.....	1
1.2 Legislation.....	1
1.3 What is meant by employment?.....	1
1.4 Overview of the role of the Office of the Children’s Guardian	2
1.5 How to contact the OCG	2
2. Information for Parents.....	3
2.1 Overview	3
2.2 Specific role for parents in the legislation	3
2.2.1 Communication with the employer	3
2.2.2 Travel home from work	4
2.2.3 Supervision while at work	4
2.2.4 Handling of babies under 12 weeks of age	4
2.3 Maximum employment per day.....	5
2.4 Impact on school progress.....	5
3. Information for Employers	6
3.1 Authority to employ children.....	6
3.1.1 Persons to apply for an authority.....	6
3.1.2 Assessment by the OCG	6
3.1.3 Conditions of an authority	6
3.1.4 Exemptions from authority	7
3.1.5 Fees for an authority.....	8
3.2 Notification to OCG	8
3.2.1 Pre-employment notification	8
3.2.2 Notification of unusual risks	8
3.2.3 Post-employment notification.....	9
3.3 General responsibilities.....	9
3.4 School requirements	10
3.5 Special responsibilities for entertainment, exhibitions & photography.....	10
3.5.1 To whom does this apply?	10
3.5.2 Exposure of child to certain scenes or situations	10
3.5.3 Hours of work.....	11
3.5.4 Facilities for children	11
3.5.5 Supervision	11
3.6 Special responsibilities for children under three years of age and babies	11
3.6.1 Babies.....	12
3.7 Other information for employers	12
3.7.1 Working With Children Check.....	13

3.7.2 Occupational Health and Safety	13
3.7.3 Industrial relations.....	13
4. Regulated Working Hours for Children.....	14
4.1 Film and television, shopping centre performances, still photography and modelling or other exhibitions.....	14
4.2 Theatrical performances	14
4.3 Other requirements for working hours	14
5. Door-To-Door Sales	15
6. Other OCG Administrative Matters.....	15
6.1 Variations to the Code of Practice	15
6.2 Procedure for seeking a variation to the Code of Practice	16
6.3 Quotes.....	17
6.4 Handling breaches of the legislation.....	17
6.5 Complaints and appeals	17
6.5.1 Complaints.....	17
6.5.2 Appeals.....	18

Attachment A: *Children and Young Persons (Care and Protection – Child Employment) Regulation 2005*

1. BACKGROUND

1.1 Purpose of these Guidelines

These Child Employment Guidelines will help employers understand and comply with their legal responsibilities when employing children under the age of 15 years in the entertainment, still photography and door-to-door sales industries. They do not cover every detail of the Regulation and therefore, you should still read and understand the requirements of the Regulation, including the Code of Practice. The Regulation and the Code of Practice is available at **Attachment A**.

Parents are required to play an important role in protecting their child's health and welfare in the work environment. These Guidelines aim to inform parents about the obligations that the Regulation imposes on them and employers. Some information is also provided about potential risks and ways to address them.

The OCG has taken care in drafting these Guidelines but if there appears to be a conflict between these Guidelines and the Regulation, which includes the Code of Practice, then the Regulation should be followed.

1.2 Legislation

The Office of the Children's Guardian (OCG) administers 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; and
- *Children and Young Persons (Care and Protection - Child Employment) Regulation 2005* (the 'Regulation') – including Schedule 1 – Code of Practice.

A copy of the Act is available at www.legislation.nsw.gov.au. A copy of the Regulation is included at Attachment A.

This legislation means that a person cannot employ a child under the age of 15 years in the entertainment, still photography and door-to-door sales industries, unless they are authorised by the OCG and comply with the Code of Practice. The aim of the legislation is to protect these children from exploitation or abuse and prevent inappropriate and unreasonable demands being placed on them.

Employers are exempt from the requirement to hold an Employer Authority In certain circumstances, but they must still notify the OCG and comply with the Code of Practice. See Section 3.1.4.

For information on how to get an Employer Authority refer to Section 3.1.

1.3 What is employment?

Under the legislation, a person is an employer of a child:

- if a child directly receives payment or material benefits from that person for the services rendered by that child; or

- if some other person, e.g. a parent or talent agent, receives the payment or material benefits for services rendered by that child.

The person who receives the services is considered to have employed the child and will be required to hold a current Employer Authority, unless they have a valid exemption.

1.4 The role of the Office of the Children’s Guardian

The well-being of children is the highest priority for OCG staff; however the Office is also responsive to the needs of employers.

The OCG has four key roles:

1. to process applications for Employer Authorities – refer to Section 3.1;
2. to manage the Pre-Employment Notification process– refer to Section 3.2;
3. to check employer compliance with the legislative requirements including making site visits and investigating alleged breaches – refer to Section 6.4; and
4. to educate all people involved in child employment and respond to enquiries by employers, parents and others.

1.5 How to contact the OCG

Employers and parents can contact the OCG on 9025 4200 during normal business hours. Ask for the Children’s Employment Officer. You can also fax the OCG on 9025 4299.

The OCG postal address is Level 6, 10 Smith Street, Parramatta 2150 and the email address is kids@kidsguardian.nsw.gov.au.

You can also go to the OCG website at <http://www.kidsguardian.nsw.gov.au>, which contains not only these Guidelines and a link to the legislation, but other helpful information for employers and parents.

2. INFORMATION FOR PARENTS

2.1 Overview

Employers must give parents a copy of the Code of Practice when their child is employed. A copy of the Code of Practice is available at Attachment A.

The Code of Practice outlines all the things the employer of a child must do. Sections 3.3 to 3.6 of these Guidelines explain requirements in more detail.

If an employer wants to employ your child in a way that is not allowed by the Code of Practice, they must consult you and have your agreement before approaching the OCG to request a variation. It is important to note that only the OCG can approve variations to the Code of Practice. Section 6.1 gives more details on variations.

If you have any concerns about your child's employment, you should get involved on their behalf and discuss your concerns with the employer. We encourage parents to read and understand the Code of Practice to help them go about doing this. If any issues arise that cannot be resolved between you and the employer, contact the OCG (contact details are in Section 1.5).

The OCG will investigate any claims about an employer not meeting requirements in the Code of Practice. See Section 6.4.

2.2 Specific role for parents in the legislation

2.2.1 Communication with the employer

Ideally, parents should be present when their child is employed, particularly for younger children and babies. If this is not possible, you should discuss supervision with the employer. The Code of Practice is very specific about the employer's supervision responsibilities. See Section 3.5.5.

It is important that you provide the employer with your contact details if you cannot be there or the details of a person whom you trust to act on your behalf. Your contact details should include:

- Name;
- Address; and
- Both home and business telephone numbers (if any).

The employer must contact you or the person you have nominated as responsible for your child in your absence if:

- Your child becomes ill or is injured; or
- Your child asks that they be allowed to contact you.

2.2.2 Travel home from work

The employer must make sure a suitable person accompanies your child when they are travelling between home and work (in either direction) or between places of work, unless:

- your child is more than 12 years of age, and
- the distance travelled is less than 10 km, and
- the travel will be by public transport and completed in daylight hours.

The employer must make sure that your child is taken home within 30 minutes of finishing work, except if you are present and available to take your child home. In those circumstances, your child may remain at the work location longer than 30 minutes.

2.2.3 Supervision while at work

If your child's employment requires them to spend one or more nights away from home, the employer must provide both you and your child with appropriate accommodation.

If your child is less than six years old then you should be available to supervise your child or authorise another person to do so on your behalf. If neither of these supervision arrangements is possible, the employer will need to make sure one of the following people supervises your child:

- the holder of a child care certificate or a certificate of child care studies issued by a college of technical and further education; or
- a registered nurse or midwife.

Employers must meet other specific requirements for children less than three years old and babies under 12 weeks of age. See Section 3.6.

If your child is more than six years old, you should be available to supervise your child or authorise another person to do so on your behalf. Alternatively, the employer may engage an adult with training or experience, in the care of children of the age of your child, to be their supervisor.

2.2.4 Handling of babies under 12 weeks of age

Babies under 12 weeks of age cannot be employed without specific consent being given by the OCG. You should check that your baby's employer has the authority to work with babies.

A maximum of four people are allowed to handle your baby including the child's mother and a registered nurse or midwife.

There are a number of special requirements that employers must follow when working with babies to protect them from disease and allergic reactions.

You are encouraged to read Sections 3.3 and 3.6 for information on the special needs of babies and children under three years of age, including the recommendations of the NSW Department of Health.

2.3 Maximum employment per day

The maximum period of employment per day depends on the child's age and varies from four hours to eight hours. The employer must provide rest periods within this employment time period.

If your child has travelled for longer than 45 minutes to or from the work location, then any excess time travelled must be included within the employment hours.

Further limitations on employment exist where your child is still attending school and performs work after school hours or on weekends.

The calculation of total employment time is explained in detail in Section 4, but is mentioned here as it will help you to plan ahead, to allow enough time to be set aside for work, education, rest and play.

2.4 Impact on school progress

It is important that parents consider the impact employment may have on their child's education, before deciding to allow them to work.

Employers are not allowed to employ a child during hours of normal school attendance, unless certain conditions are met. Employers must make sure that the combined time required to fulfil educational requirements and employment, in any period of seven consecutive days, does not exceed 40 hours. See Section 3.4.

You may want to discuss the need for supplementary tutoring arrangements with the employer.

3. INFORMATION FOR EMPLOYERS

3.1 Authority to employ children

3.1.1 Persons to apply for an authority

You must not employ a child under the age of 15 years in the entertainment industry, still photography or for door-to-door selling unless you hold an Authority to do so. Unless you can verify that you qualify for an exemption. See Section 3.1.4.

You must not employ a baby under the age of 12 weeks in the entertainment industry or still photography unless the OCG expressly authorises you to do so.

3.1.2 Assessment by the OCG

Applications for an Employer Authority must be lodged with payment of the appropriate fee. Allow at least three days for the OCG to process the application. Cheques should be made payable to the 'NSW Office of the Children's Guardian.'

The fee may vary depending on the length of the authority and whether a discount applies. See Section 3.1.5 for details. It is strongly recommended that employers contact the OCG to discuss their needs and circumstances so that the applicable fee can be determined and the correct amount sent by the employer.

Applications should be addressed to:

Children's Employment Officer
NSW Office of the Children's Guardian
Level 6, 10 Smith Street
Parramatta NSW 2150

If the application is made on behalf of a company, the signatory to the application must be a full time principal of the company. They must sign a declaration on behalf of the company giving a commitment that all productions involving children will comply with the provisions of the Act and Regulation, including the Code of Practice. An Application Form for an Employer Authority is available here [xxx](#).

3.1.3 Conditions of an authority

If the OCG approves your application for an Employer Authority, it will be subject to the following conditions:

- that you will comply with the requirements of the Code of Practice;
- that you will use your best endeavours to ensure that all persons under your control comply with the requirements of the Code of Practice. This undertaking extends to all staff the company employs on a production, or personnel contracted by your company for a production, that have direct contact with the children or overall responsibility for the production.

- that you will ensure that a copy of the Code of Practice is given to a parent of each child that you employ under the Authority; and
- that you will furnish the Children's Guardian with such information concerning the employment of children by you, as the Children's Guardian may reasonably require, such as the Notifications outlined in Section 3.2.

Please note that under the legislation the OCG may impose other conditions on your Employer Authority.

Penalties may apply for breaches of these conditions. Refer to Section 6.4 for further details.

3.1.4 Exemptions from authority

The following people are exempted by the Regulation from being required to hold an Employer Authority:

- any person who employs a child who is more than 10 years old where:
 - the employment is outside school hours and for no more than 10 hours per week, and
 - the person complies with the requirements of the Code of Practice in respect of the child's employment, and
 - the person uses his or her best endeavours to ensure that all persons under his or her control comply with the requirements of the Code of Practice in respect of the child's employment, and
 - the person ensures that a copy of the Code of Practice is given to a parent of the child.
- any person who employs a child in connection with the conduct of an entertainment, exhibition or performance under the auspices of the government of a foreign country, in relation only to children who are so employed and who are nationals of the same foreign country.

Additionally, the following people are exempted by the Act from being required to hold an Employer Authority:

- A person who employs a child where:
 - the child is employed for the purpose of a fundraising appeal (within the meaning of the *Charitable Fundraising Act 1991*) by a person lawfully conducting the appeal, or
 - the child is employed for the purpose of an occasional entertainment or exhibition, the net proceeds of which are to be applied wholly for a charitable object.

You must still notify the OCG about employment that you believe to be exempt and you must still comply with the Code of Practice.

3.1.5 Fees for an authority

Schedule 2 of the Act requires an application for an Employer Authority to be sent with the applicable fee. The table below shows the fee you will be charged.

	Entertainment and exhibition	Still photography	Door-to-door sales
12 month authority	\$1,100.00	\$484.00	\$550.00
1 month authority Available where the number of children employed at any one time is not more than 5	\$550.00	\$242.00	\$275.00

All amounts include 10% GST

The OCG may extend a one month Authority to a 12 month Authority if the employer applies before the one month Authority has expired. The employer will have to pay the difference between the monthly fee and the 12 month fee. The extended Authority will date from the commencement of the original one month Authority.

The Regulation allows for a 10% reduction in the fee if the OCG is satisfied that you show a proven commitment to the principles of the Code of Practice. This discount is therefore not available if you are a new employer.

It is strongly recommended that employers contact the OCG to discuss their needs and circumstances so that the applicable fee can be determined.

For information on the methods of payment please see the Employer Authority application form which is available here [xxx](#).

3.2 Notification to OCG

3.2.1 Pre-employment notification

Authority holders must provide details to the OCG of each production employing children on the 'Pre-Employment Notification' Form. The form is available here [xxx](#).

You are required to submit the Pre-Employment Notification Form seven days before each production. The OCG appreciates that there may be circumstances where casting of your production has not been finalised within seven days before it begins. Less than seven days notice may be accepted by negotiation with the OCG, providing no additional welfare issues need to be resolved.

Once the Pre-Employment Notification Form is submitted you can proceed with your production, unless you are seeking a variation or there are unusual risks (refer to Section 3.2.2). The OCG will contact you if there are any concerns.

3.2.2 Notification of unusual risks

The Pre-employment Notification must also provide details of any unusual risks with the proposed location.

OCG officers may attend locations to monitor the risks, particularly where the production requires or could be affected by one or more of the following:

- stunts;
- special effects;
- babies;
- toddlers;
- water;
- large groups of children;
- highly dramatic portrayals;
- specialised skills (e.g. dance, skateboarding, surfboard riding);
- extremes of weather or location;
- exemptions to the statutory conditions; and
- past breaches of the Code of Practice by the employer.

The OCG strongly advises you contact the Office well in advance of the proposed production for feature films, television mini-series or ongoing television drama series. This is so that any welfare or education issues can be resolved at this early stage and pre-production planning can proceed without last minute concerns or problems arising.

All employment details provided to the OCG must be correct. Any changes to these details must be given to the OCG as soon as possible.

3.2.3 Post-employment notification

The OCG needs employers to submit post-employment information about final call and release times. This information allows OCG staff to monitor compliance with the Code of Practice and, in particular, the working hours of the children employed. The OCG may also require other information to check compliance with the Code of Practice.

3.3 General responsibilities

The Code of Practice in the Regulation imposes the following general obligations on employers:

- Records to be maintained of each child's employment;
- Notice of work locations including details of unusual risks – refer to Section 3.2.1 and 3.2.2;
- Each child must be covered by a personal accident insurance policy;
- Hours of work – refer to Section 4 for more details;
- Schooling requirements – refer to Section 3.4 for more details;

- Calculation of the child's total period of employment - refer to Section 4 for more details;
- Requirement for children to travel home;
- Minimum breaks between successive shifts;
- Food and drink;
- Toilet facilities;
- Protection from the elements;
- Punishment prohibited;
- Notification of accidents;
- Parental contact to be granted when asked; and
- Application of the *Industrial Relations Act 1996*.

The NSW Department of Health also recommends that the special needs of young children, particularly those up to the age of three years, are considered.

3.4 School requirements

You must not employ a child during normal school hours unless that child:

- has been given approval to be absent from school by the Principal or the NSW Department of Education and Training; or
- is enrolled at a school to undertake courses of study by means of distance education; or
- is registered for home schooling and the employment is permitted by the conditions to which that registration is subject.

The combined time required to fulfil educational requirements and employment, in any period of seven consecutive days, must not exceed 40 hours.

3.5 Special responsibilities for entertainment, exhibitions & photography

3.5.1 Who has special responsibilities?

Employers need to be aware of additional responsibilities when employing a child for:

- an entertainment or exhibition;
- a performance that is recorded for use in a subsequent entertainment or exhibition; or
- a photographic session.

3.5.2 Exposure of child to certain scenes or situations

You must ensure that no child is cast in a role or situation that is inappropriate to the child, having regard to their age, maturity, emotional or psychological development

and sensitivity. You must make a judgement on a case-by-case basis whether the role or situation is appropriate. If you have any queries about a particular casting or scene, you should seek advice from OCG staff.

You are not allowed to expose a child to a scene that is likely to cause them distress. You must not make a child distressed on purpose in order to get a more realistic depiction of a particular emotion or reaction.

Finally, you must not employ a child in any situation in which they or any other person is naked.

3.5.3 Hours of work

There are also requirements as to what hours children of various ages can work. These are explained in more detail in Section 4.

3.5.4 Facilities for children

The following facilities must be available:

- Provision of recreation materials and rest facilities; and
- Dressing room facilities that enable the child to dress and undress in private.

3.5.5 Supervision

You must ensure that each child has appropriate supervision suitable to their age, sex and degree of maturity and also the number of children in certain age brackets. For example, a supervisor can only supervise two children at the same time if any of the children are under three years of age.

The Code of Practice outlines a range of suitable people who can provide supervision depending on the child's age. For example, a person responsible for the child, or a person authorised in writing by the person responsible for the child, can be the supervisor, or you may need to hire a trained childcare worker or nurse.

3.6 Special responsibilities for children under three years of age and babies

If you employ children under three years of age or babies under 12 weeks of age, you have special responsibilities.

You must hire a registered nurse or registered midwife to be present at all times. Their role is to decide whether it is suitable for the child or baby to perform the work required. They also need to determine if the environment where the child or baby will be working is appropriate. You must follow the advice of the registered nurse or midwife in all matters relating to the welfare of the child or baby.

3.6.1 Babies

If you want to employ a baby under 12 weeks of age you must have the express approval of the OCG to do so.

In addition to the responsibilities outlined in Section 3.5, you must not allow a baby to be exposed to:

- direct lighting;
- persons suffering respiratory or skin infections; or
- contaminated or irritating make-up.

Only four people are allowed to handle a baby, including the baby's mother and the registered nurse or midwife.

In assessing whether a baby is suitable for employment, your registered nurse or midwife must be satisfied that the baby meets the following criteria:

- was delivered full term and in good health;
- birth weight was at least 3.0 kilograms;
- no post-natal problems;
- feeding successfully; and
- weight gain from birth has been satisfactory.

The NSW Department of Health recommends that the registered nurse or midwife considers getting a health assessment and written certification or clearance from a general practitioner when assessing whether a baby is suitable for employment.

Additionally, when assessing whether the environment in which a baby will be working is appropriate, the NSW Department of Health advises that the registered nurse or midwife should be satisfied that:

- food and drink suitable for a baby is available; or
- appropriate and private breast-feeding facilities are supplied; and
- hygienic nappy change facilities are supplied.

Appropriate sleep and or rest areas should also be available.

The NSW Department of Health strongly supports breastfeeding. Breastfeeding should be encouraged and available on demand to breastfed infants. If the infant is bottle fed, then appropriate storage facilities for expressed breast milk or formula should be available.

3.7 Other information for employers

You need to be aware that other pieces of legislation may affect your role as an employer of children, in addition to the Act and Regulation discussed in this Guide. They include:



3.7.1 Working With Children Check

Working with Children Checks are conducted by the NSW Commission for Children & Young People to make workplaces safer for children by helping to prevent unsuitable people from working with them.

Further details are available on the Commission's website at www.kids.nsw.gov.au

3.7.2 Occupational Health and Safety

WorkCover NSW administers and enforces compliance with Occupational Health and Safety (OHS), injury management and workers compensation legislation. It also manages the workers compensation system.

Further information is available on the WorkCover website at www.workcover.nsw.gov.au

3.7.3 Industrial Relations

The Office of Industrial Relations (OIR) is part of the NSW Department of Commerce. The OIR offers a wide range of services in the areas of compliance, equity and workplace reform, including information on awards and the rights and responsibilities of employers and employees.

Further information is available from the Industrial Relations section on the NSW Department of Commerce website at www.commerce.nsw.gov.au

4. REGULATED WORKING HOURS FOR CHILDREN

4.1 Film and television, shopping centre performances, still photography and modelling or other exhibitions.

AGE	HOURS DURING WHICH CHILD MAY BE EMPLOYED	NUMBER OF DAYS OF EMPLOYMENT IN ANY PERIOD OF 7 DAYS	MAXIMUM EMPLOYMENT PER DAY
Under 6 months	6 am to 6 pm	1	4 hrs
6 mths & under 3 yrs	6 am to 6 pm	1	4 hrs
3 yrs & under 8 yrs	6 am to 11 pm	4	6 hrs
8 yrs & under 15 yrs	6 am to 11 pm	5	8 hrs

4.2 Theatrical performances

AGE	HOURS DURING WHICH CHILD MAY BE EMPLOYED	NUMBER OF DAYS OF EMPLOYMENT IN ANY PERIOD OF 7 DAYS	MAXIMUM EMPLOYMENT PER DAY
Under 6 months	9 am to 6 pm	1	4 hrs
6 mths & under 2 yrs	9 am to 6 pm	1	4 hrs
2 yrs & under 6 yrs	9 am to 6 pm	3	4 hrs
6 yrs & under 10 yrs	9 am to 10 pm	4	4 hrs
10 yrs & under 12 yrs	9 am to 11 pm	4	6 hrs
12 yrs & under 15 yrs	9 am to 11 pm	4	8 hrs

4.3 Other requirements for working hours

You must comply with the following additional requirements, some of which modify the general working times and days in the above tables:

- you can only employ a child for one shift on any one day;
- you can only employ a child for a maximum of 4 hours if the child attends school on that same day;
- you must provide a 10 minute rest break each hour and a 1 hour rest break every 4 hours for each child;
- the rest breaks are to be included in the maximum employment per day;
- any time spent in excess of 45 minutes travelling to and from work is to be included in the maximum employment per day;
- a child cannot start work within 12 hours of finishing work for the same or another employer;
- a child cannot work later than 9 pm if the child needs to attend school the next day; and
- you cannot employ a child for 3 consecutive evening performances if the child is required to attend school the next day.

5. DOOR-TO-DOOR SALES

The minimum age for children employed in door-to-door sales is 14 years and 9 months.

Employers wishing to employ children in door-to-door sales must be authorised by the OCG and they must comply with the requirements of the Regulation, including the Code of Conduct.

Employers are exempt from the requirement to hold an Employer Authority in certain circumstances, but they must still notify the OCG and comply with the Code of Practice. See Section 3.1.4.

The Code of Conduct outlines special requirements that employers must follow to ensure the safety of children engaged in door-to-door sales:

- the child must not be permitted to sell to a person in a motor vehicle;
- the child must not be permitted to enter a private dwelling; and
- the child must not work for more than 5 days per week and for not more than 6 hours per day and not before 6.30 am or after 6.00 pm.

You must also ensure that each child employed in door-to-door sales works in the company of at least one other person and clearly indicates, by means of identification badges or distinctive clothing, your business name.

A supervisor should remain in the general vicinity of the child and regularly contact the child ensuring they know the whereabouts of each child at all times.

6. OTHER OCG ADMINISTRATIVE MATTERS

6.1 Variations to the Code of Practice

OCG staff have the discretion to approve variations to the Code of Practice in certain specific instances. A variation must be negotiated in advance and will not be granted retrospectively. Requests for variations should be made when the employer applies for an authority, where possible.

A representative of an authorised employer may apply for a variation for a child or children in a specific production. A request for a variation can be for a series, an entire production or a one-off event. The granting of variations occurs only where it can be shown that a child's welfare will not be compromised.

The OCG will consider a range of factors before a variation is approved, including:

- (i) age of child;
- (ii) demands of the role;
- (iii) experience of the child;
- (iv) number of consecutive days employed;
- (v) travel or accommodation arrangements;
- (vi) reputation and past record of employer and production house;

- (vii) time of day;
- (viii) turnaround time;
- (ix) parents and/or child's wishes;
- (x) facilities on location/studio; and
- (xi) views of the registered nurse or midwife, where applicable.

6.2 Procedure for seeking a variation to the Code of Practice

Employers are to follow the procedures when seeking a variation:

1. Discuss the request with parents to alert them to your intention to seek a variation and get their view.
2. Make a phone call to the OCG to discuss production needs.
3. Confirm your request in writing by fax or email to the OCG and include:
 - (i) name of each child, address and date of birth;
 - (ii) brief details of request specifying each variation sought and the reason or justification;
 - (iii) date and location of employment;
 - (iv) production title;
 - (v) name of child's talent agent;
 - (vi) parent's response to request for variation. A variation will not be approved if the parent does not agree. **A parent's consent does not give de-facto approval to work outside the Code of Practice**, and
 - (vii) whether the request is for a series, an entire production or a one-off event.

The OCG will then process the variation and, if approved, will email or fax the designated representative of the employer that made the request. The employer must advise the parents of each child affected when a variation is granted and the conditions that apply.

Variations and any conditions must be adhered to absolutely and a copy of the variation must be kept with the employer's records for the production.

Certain difficulties may become evident during pre-production in the scheduling of children that could be avoided by consulting with OCG officers. In rare instances unforeseen problems do arise on the day while the production is being shot, that may jeopardise the completion of the scheduled work. In these circumstances, employers should contact the OCG immediately. It may be possible to provide a variation even at that late stage.

Employers seeking variations from the OCG to employ children outside office hours need to plan ahead and make applications in advance.

6.3 Quotes

Production companies sometimes contact the OCG when they are preparing quotes to tender for a production. They might seek some indication of the OCG's position if they were awarded a job and were to seek variations that would effect the duration or cost of a production.

The OCG will discuss production outlines and provide 'in-principle' approval to proposed variations that meet OCG requirements and do not compromise the welfare of the children being employed. Often, however, scripts and creative outlines change considerably from the initial idea to final production. As a result, the OCG will only consider giving in-principle approval to variations for well-developed and concrete proposals.

6.4 Handling breaches of the legislation

Any allegations or reports on breaches to the Act or Regulation, including the Code of Practice, will be investigated by the OCG. The OCG follows the principles of natural justice and provides an opportunity to the employer and/or relevant parties to provide a response to the allegations or breach report. Once the OCG has completed its investigation, a determination is made about the appropriate action and the employer is notified.

6.5 Complaints and appeals

6.5.1 Complaints

If you wish to lodge a complaint about the OCG's process, policies or staff conduct you are encouraged to discuss the matter with the Children's Employment Officer in the first instance. If you are not able to resolve the matter through discussions you should either lodge a complaint using the online complaint form which is available at <http://www.kidsguardian.nsw.gov.au/complaints.php>.

Or contact the OCG's Director by:

Mail:

Level 6, 10 Smith St
Parramatta NSW 2150

Phone: (02) 9025 4200

Fax: (02) 9025 4299

Email: kids@kidsguardian.nsw.gov.au

If you are not satisfied with the OCG's response to your complaint, you may take your complaint to the NSW Ombudsman - Community Services Division. The contact details are:

Phone: 02 9384 4999

Website: www.ombo.nsw.gov.au

6.5.2 Appeals

If you disagree with a decision about an Employer Authority, you may apply to have the decision reviewed. You should first discuss the matter with the OCG officer who made the decision. If you are not able to resolve the matter, you should apply for an internal review by contacting the OCG's Director. See Section 6.5.1 for contact details.

If you are not satisfied with the result of an internal review, you may apply to the Administrative Decisions Tribunal (Community Services Division) for an external review. The Administrative Decisions Tribunal (ADT) may be contacted on telephone number 02 9223 4677 or further information may be obtained from its website at www.lawlink.nsw.gov.au/adt.

Children and Young Persons (Care and Protection—Child Employment) Regulation 2005

The *Children and Young Persons (Care and Protection — Child Employment) Regulation 2005* is currently not available within this guide. Please refer to the Children's Employment page of our website at www.kidsguardian.nsw.gov.au to download a PDF version of the Regulation.

