



MINISTERIAL BRIEF



Education Directorate

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To: Minister for Education and Early Childhood Development

Tracking No.: MIN20/1220

Date: 21/08/2020

From: Executive Group Manager, Business Services

Subject: [Redacted] Brindabella Christian College (BCC) [Redacted]

Critical Date: N/a

Critical Reason: N/a

Recommendations

That you:

1. [Redacted]

Noted / Please Discuss

Yvette Berry MLA

08/09/20

Minister's Office Feedback

Background

[Redacted Background Content]

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**Issues**

6. Separately, in 2019 CECA undertook regulatory action against Brindabella Christian College Early Learning Centre (ELC). The regulatory action taken by CECA included a requirement that all persons with management and control of the ELC undertake a reassessment of fitness and propriety. The provider is yet to comply with that obligation.

**Financial Implications**

7. NIL

**Consultation**Internal

8. NIL

Cross Directorate

9. Nil

External

10. NIL

**Work Health and Safety**

11. NIL

**Benefits/Sensitivities**

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**Communications, media and engagement implications**

16. NIL

**Related briefs**

MIN19/1290

Signatory Name: Andrew Parkinson Phone: 54593

Action Officer: Kristen Foster Phone: 56749

**Attachments**

Attachment	Title
Attachment A	
Attachment B	
Attachment C	
Attachment D	

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## Education Directorate

**To:** Minister for Early Childhood Development

Tracking No.: MIN20/1586

**Date:** 19/11/2020

**From:** Director General, Education

**Subject:** Brindabella Christian College

**Critical Date:** 20/11/2020

**Critical Reason:** Ministerial request

DDGSPR: 19/11/2020

### Recommendations

That you:

1. Note the information contained in this brief;

Noted / Please Discuss

04/12/20

#### Minister's Office Feedback

*I note that this investigation took place in July last year and my office has only just been briefed.*

### Background

1. On 14 May 2019, Children's Education and Care Assurance (CECA) received a direct complaint from an educator at Brindabella Christian College Early Learning Centre Charnwood. The complaint engaged offences dealing with inappropriate discipline, inappropriate interactions with children, failing to follow policies and procedures and the accuracy of prescribed records.

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2. On 17 July 2019, an investigation was conducted and a show cause was issued to the provider setting out the allegations and the evidence informing the allegations.
3. [REDACTED] replied to the show cause notice on behalf of the provider. [REDACTED] responses demonstrated a lack of understanding of what conduct is acceptable under the National Quality Framework (NQF), in particular by advocating that a range of conduct set out in the evidence was acceptable.
4. On 20 September 2019, CECA made a decision in relation to the evidence obtained by the investigation. The decision noted the steps taken by the provider and the nominated supervisor to address issues in the light of the show cause notice. The decision also issued the provider with a Compliance Notice of matters that should also be addressed and determined, this included training in appropriate interactions for persons with management or control. Following this training each person with management and control were required to undergo assessment or reassessment for fitness and propriety to be involved in an education and care service.
5. On 8 October 2019, the Canberra Times published an article about the investigation and the compliance action. Also on 8 October 2019 [REDACTED] made a formal complaint about Education Directorate staff and wrote an email questioning the decision to test the fitness and propriety of persons with management and control.
6. During October and December 2019, CECA engaged with Brindabella Christian College to affirm compliance with the Compliance Notice. In December an invitation to attend an assessment for fitness and propriety was sent to the provider with a date of 17 January 2020.
7. In January 2020, the provider's lawyer requested a re-scheduling of the date due to the impact of the bushfires and challenged CECA's power to reassess fitness and propriety.
8. By the time COVID 19 had impacted upon the ACT, a new date had not been set. On 14 April 2020, the provider's lawyer wrote to the Director General of Education, again disagreeing with CECA's findings.
9. On 1 September 2020, a letter was sent to [REDACTED] proposing a rescheduling of the assessment. Despite follow up emails and calls, no response was forthcoming. On 23 September 2020, the provider's lawyer asked that all correspondence to [REDACTED] be directed to the provider's lawyer.
10. On 29 September 2020 FOI documents related to this investigation and compliance action were publicly released.
11. On 15 October 2020 the provider's lawyer again challenged the issue of fitness and propriety. A reply was provided to the lawyer's issues on 27 October 2020.

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12. On 12 and 16 November 2020, CECA engaged in without prejudice discussions with the provider's lawyer to progress compliance from the provider. The provider's lawyer is yet to respond to the last discussion.
13. A full timeline is at Attachment A.

## Issues

### Fit and proper person

14. Under section 21 of the *Education and Care Services National Law, (National Law)* CECA is empowered to assess, or reassess, at any time whether a person with management and control is a fit and proper person to be involved in the provision of an early childhood education and care service.
15. In response to the lessons learnt from the widespread Family Day Care fraud in 2016 and 2017, most jurisdictions have implemented standard testing and interviewing to establish fitness and propriety when deciding to grant a provider approval. The testing is not onerous but does require those participating to educate themselves about the fundamentals of the NQF and legal obligations of providers and services.
16. As a matter of equity and convenience for all, the test and interview is also offered to those subject to reassessment.
17. There is also a legacy issue in relation to fitness and propriety, as when the National Law came into effect in the ACT existing providers and services were deemed to be providers and services under the National Law without having to meet the thresholds of provider or service approval. Brindabella Christian College was one of those providers.
18. Those deemed providers who have not taken the time to understand the obligations and expectations of the National Law usually face difficulties later on if non-compliance is found. In most cases regulatory action is an opportunity for the provider to access the abundance of resources provided by CECA and ACECQA to understand their obligations, achieve compliance and institute best practice.
19. There is no power in the National Law to compel participation in a test. In the overwhelming majority of cases individuals agree to participate. If they fail the test, the opportunity remains open to undertake the test again.
20. At this point of time Brindabella Christian College's lawyer is stating that [REDACTED] does not wish to undertake the test. In response CECA has asked the lawyer how [REDACTED] might achieve establishing [REDACTED] is fit and proper under the National Law in a demonstrable way. A reply to that question is yet to be received.
21. CECA has also indicated to the lawyer that if nothing meaningful is forthcoming then CECA is within its power to make a decision on the available evidence.

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22. CECA also believes that Brindabella Christian College may hold a misunderstanding that a person with management and control is someone who the provider submits as a person with management and control on their provider record, through the online portal.
23. The provider has only one person listed to have management and control on the online system. However, the definition in the *National Law* is an objective test, meaning that if a person meets the criteria they are a person with management and control. The public record of the governance of Brindabella Christian College shows three people who meet the test.

Disclosure of information

24. On 29 September 2020, FOI documents related to this investigation and compliance action were publicly released. Any information disclosed by the FOI can be restated publicly.
25. The FOI documents redact the names of individuals who are not ACT Government officers exercising their duties. The redactions were made on the basis of confidentiality and privacy provisions in the Commonwealth's *Freedom of Information Act 1982* (the Commonwealth FOI law applies to records under the *National Law*.)
26. Section 273 places a duty of confidentiality in relation to protected information obtained under the *National Law*, which includes information that would, or could, identify an individual. It is a criminal offence for anyone to disclose the information unlawfully. The *National Law* sets out the lawful exceptions to the duty of confidentiality, which includes the application of relevant Territory laws.
27. At this stage the exchange with [REDACTED] would be protected information. However, disclosure about the provider without identifying individuals would not be protected. The challenge in this circumstance is that the [REDACTED] identity is so strongly associated with Brindabella Christian College.
28. The options for the provider to answer the issue of fitness and propriety are narrow and CECA will have to make the assessment on the evidence available if the provider's lawyer cannot propose a meaningful alternative. CECA has set a deadline of 27 November 2020 for a meaningful response from the provider.

**Financial Implications**

29. There are no financial implications.

**Consultation**Internal

30. No internal consultation on this brief was undertaken.

Cross Directorate

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31. No cross directorate consultation on this brief was undertaken.

External

32. No external consultation on this brief was undertaken.

**Work Health and Safety**

33. 

**Benefits/Sensitivities**

34. Brindabella Christian College had the opportunity to seek review of the decision at the time it was made but did not do so. Now that there is significant media coverage of the issue, it remains a possibility that the College will litigate if the College does not agree with CECA's decision on fitness and propriety.
35. On 27 October 2020, a further FOI request was made by a member of the public for three compliance actions between April 2016 and December 2018. These compliance actions included copies of compliance audits, an administrative letter and a request for information letter. CECA provided these details to the FOI team within the Education Directorate on 16 November 2020.

**Communications, media and engagement implications**

36. There has been significant coverage of this issue and other issues with Brindabella Christian College. This will continue as there is a further FOI underway in relation to past non-compliance.

Signatory Name: Katy Haire

Action Officer: Sean Moysey

Phone: 72143

**Attachments**

Attachment	TRIM No	Title
Attachment A	DOC20/35524	Timeline of CECA's investigation and compliance action in relation to the May 2019 complaint about Brindabella Christian College.

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## Timeline of the May 2019 investigation of Brindabella Christian College Early Learning Centre

14 May 2019 — CECA received a direct complaint regarding the conduct of [redacted] educators at Brindabella Christian College Early Learning Centre – Charnwood, a direct complaint was received by the Authority regarding the conduct of [redacted] educators

21 May 2019 — The complaint was triaged and an investigation commenced.

21 June 2019 — CECA reviewed evidence obtained by the investigation and agreed to draft a show cause notice to Brindabella Christian College (the provider).

17 July 2019 — The show cause notice was issued to the provider.

31 July 2019 — The provider requested an extension to respond to the show cause notice and the request was granted.

2 August 2019 — The provider responded to the show cause notice.

19 August 2019 — CECA decided that the appropriate regulatory action to take was to: issue caution letters to relevant educators and nominated supervisors; issue a compliance notice to the provider; and to reassess the fitness and propriety of persons with management control.

20 September 2019 — A written decision and compliance notice was issued to the provider.

4 October 2019 — CECA received a response to the compliance notice from the provider.

8 October 2019 — [redacted] wrote to CECA via email. [redacted] referred to a *Canberra Times* article and CECA's investigation, questioning the decision to reassess fitness and propriety of persons with management or control.

8 October 2020 — [redacted] wrote to the Directorate wishing to make a formal complaint about officers.

9 October 2019 — CECA responded to [redacted] explaining the terms of the *National Law* and the powers to assess fitness and propriety of people with management or control.

24 October 2019 — A compliance audit of the Charnwood service identified multiple compliance issues.

6 November 2019 — A compliance notice was issued in relation to the audit findings.

12 November 2019 — CECA assessed compliance with the compliance notice issued on 20 September 2019 and identified inaccuracies in working with children records submitted by the provider.

18 November 2019 — The provider submitted updated working directly with children records to CECA.



26 November 2019 — The provider submitted a response to the compliance notice issued on 6 November 2019.

2 December 2019 — CECA acknowledged that the obligations of the audit compliance notice of 6 November 2019 was complete.

16 December 2019 — CECA issued an invitation to attend an assessment for fitness and propriety on 17 January 2020.

20 December 2019 — CECA requested evidence of training for persons with management or control as required by investigation compliance notice issued on 20 September 2019.

15 January 2020 — [REDACTED] wrote to CECA on behalf of [REDACTED] requesting a re-schedule of the fitness and propriety assessment due to impact of the bush fires on [REDACTED]. The letter also challenges the investigation decision of 20 September 2019 and questions the Authority's power to reassess the fitness and propriety persons with management or control.

30 January 2020 — CECA responded to [REDACTED] letter.

February 2020 to August 2020 — The bush fires and advent of COVID disrupted business as usual.

1 September 2020 — CECA wrote to [REDACTED] requesting rescheduling of assessment.

15 September 2020 — CECA wrote a follow up email to [REDACTED] to schedule an assessment.

22 September 2020 — CECA called [REDACTED] to schedule an assessment, a message was left, no response was forthcoming.

23 September 2020 — [REDACTED] wrote to CECA asking that correspondence to [REDACTED] be re-directed to [REDACTED].

7 October 2020 — CECA wrote to [REDACTED] to schedule an assessment.

15 October 2020 — [REDACTED] wrote to CECA again questioning power and method to reassess fitness and propriety.

27 October 2020 — CECA responded to [REDACTED].

12 November 2020 — CECA called [REDACTED] requesting without prejudice discussion to progress the matter.

16 November 2020 — CECA and [REDACTED] had a without prejudice discussion to progress the matter. Awaiting further response.

## Education Directorate

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To: Minister for Education and Youth Affairs

Tracking No.: MIN20/1744

Date: 11/01/2021

From: Executive Group Manager, Business Services

Subject: Operations of Brindabella Christian College (BCC)

Critical Date: Nil

Critical Reason: Nil

## Recommendations

That you:

1. Note the information contained in this brief; and

**Noted / Please Discuss**

2. Sign the letter to the Hon Alan Tudge MP, Minister for Education and Youth at Attachment A

**Signed / Not Signed / Please Discuss**

22/01/21

Executive Feedback

## Background

1. Brindabella Christian College (BCC) is a Christian school that commenced operations in 1980 and currently has approximately 1,000 enrolled students over two campuses. The school is registered as an Australian Public Company, as Brindabella Christian

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Education Limited (BCEL), and trades as “Brindabella Christian College”. The school offers the following education streams:

- Early Learning Centre (for students aged 3 years to 6 years)

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3.

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6.

7. The Directorate is responsible for

and for processes relating to the provision of early childhood education under the *Education and Care Services National Law Act 2010*.

**Issues**

8. The Directorate including the ACT Regulatory, Children’s Education and Care Assurance (CECA) has received a significant volume of complaints from families and students about BCC.

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9. The Directorate has continued to work with the school during 2020 [REDACTED] [REDACTED] to agree a means to assess the fitness and propriety of persons with management or control to be involved in the provision of an education and care service in accordance with the *Education and Care Services National Law Act 2010*.

10. [REDACTED]

11. [REDACTED]

12. [REDACTED]

**Financial Implications**

13. Nil

**Consultation**Internal

14. Children's Education and Care Assurance and Governance Branch collaborated on this briefing.

Cross Directorate

15. Nil

External

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

**Work Health and Safety**

19. Nil

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**Benefits/Sensitivities**

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22.

23.

24. Children's Education and Care Assurance's standard practice is to conduct an interview and test to assess the fitness and propriety of persons with management and control. The persons with management and control declined to attend an interview and agreement is yet to be reached on alternative course of action.

**Communications, media and engagement implications**

25. Nil

Signatory Name: Margaret McKinnon

Phone: 72790

Action Officer: Anne Louise Dawes

Phone: 56749

**Attachments**

Attachment	TRIM No	Title
Attachment A	DOC21/53	Letter - Brindabella Christian College Concerns - Final for comment

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### Yvette Berry MLA

Deputy Chief Minister  
 Minister for Early Childhood Development  
 Minister for Education and Youth Affairs  
 Minister for Housing and Suburban Development  
 Minister for Women  
 Minister for the Prevention of Domestic and Family Violence  
 Minister for Sport and Recreation

Member for Ginninderra

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The Hon Alan Tudge MP  
 Minister for Education and Youth  
 Parliament House  
 CANBERRA ACT 2600

Dear Minister Tudge *Alan*

I am writing to ensure you are aware of the issues raised with me by parents and community members regarding the operations of Brindabella Christian College, a kindergarten to year 12 school with an early learning centre located in Canberra.

In addition, in May 2019, the ACT's early childhood education and care regulatory authority, Children's Education and Care Assurance (CECA), received a direct complaint regarding serious allegations about conduct of staff at the school and the school's compliance with policy, procedure and record keeping obligations. Following the investigation, CECA invited the provider to attend an

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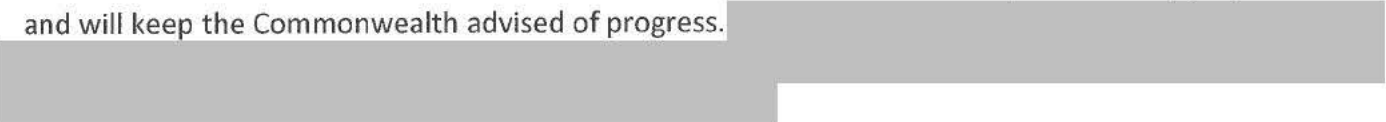
YvetteSBerry

Yvette\_berry\_mla

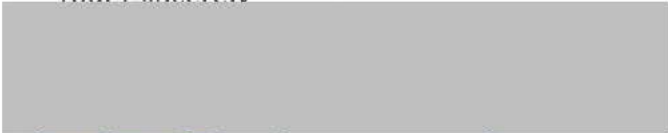
interview and test to assess the fitness and propriety of the provider to engage in early childhood services. This invitation was declined. Following CECA's ongoing engagement with the provider's representatives during 2020, a deadline of 27 November 2020 was set with the provider to propose a meaningful alternative to demonstrate the fitness and propriety. The provider's representative presented CECA with some further materials, and CECA is considering the question.



The ACT Government will continue to take actions on the matters within its purview as appropriate and will keep the Commonwealth advised of progress.



Yours sincerely



Yvette Berry MLA  
Minister for Education and Youth Affairs