



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2018-0245

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	Waived
6. Processing time (in working days)	26
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

**From:** [REDACTED]  
**To:** [CMTEDD.FOI](#)  
**Subject:** Freedom of Information request  
**Date:** Thursday, 13 September 2018 2:03:46 PM

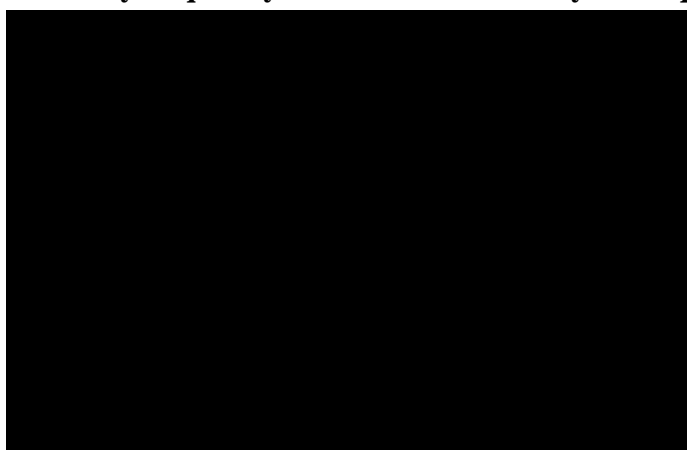
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Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

### Your details

**All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.**

Title:  
First Name:  
Last Name:  
Business/Organisation:  
Address:  
Suburb:  
Postcode:  
State/Territory:  
Phone/mobile:  
Email address:



### Request for information

**(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)**

Under the Freedom of Information Act 2016 I want to access the following document/s (\*required field):

All documents related Notifiable Instrument NI2018-415. This may include but is not limited to, correspondence, policy documents or discussions, meeting notes, Ministerial briefs, and consultation regarding the changes effected in or relating to the Notifiable Instrument.

I do not want to access the following documents in relation to my request::

n/a

Thank you.  
Freedom of Information Coordinator



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI 2018-0245



via email: 

Dear 

### **FREEDOM OF INFORMATION REQUEST**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 13 September 2018, in which you sought access to “*all documents related Notifiable Instrument NI2018-415. This may include but is not limited to, correspondence, policy documents or discussions, meeting notes, Ministerial briefs, and consultation regarding the changes effected in or relating to the Notifiable Instrument*”.

#### **Authority**

I am an Information Officer appointed by the Director-General of CMTEDD under section 18 of the Act to deal with access applications made under Part 5 of the Act.

#### **Timeframes**

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 2 November 2018.

#### **Third Party Consultation**

In making this decision, I completed consultation with a relevant third party in accordance with section 38 of the Act. The views of identified third party were taken into account in making this decision.

#### **Decision on access**

Searches were completed for relevant documents and 12 documents were identified that fall within the scope of your request.

I have decided to grant full access to 1 document, partial access to 10 documents and exempt 1 document in full. The information redacted in the documents I consider to be information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have included as Attachment A to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as Attachment B to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

### **Statement of Reasons**

In reaching my access decision, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;
- the views of the relevant third party; and
- the *Human Rights Act 2004*.

### **Exemption claimed**

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

#### Legal Professional Privilege (Schedule 1 of the Act)

Folios 12-16 contain advice provided by the Justice and Community Safety Parliamentary Counsel. I consider the advice is subject to legal professional privilege as it was brought into existence for the dominant purpose of providing a legal opinion in relation to provisions in the *Workers Compensation Act 1951*. I am satisfied that the communications were made in circumstances of confidentiality and were provided by an independent legal adviser satisfying the requirements to attract legal professional privilege. For this reason, I have decided to exempt from release this information.

#### Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

#### Factors favouring disclosure (Schedule 2 section 2.1)

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors in

favour of disclosure are relevant to determine if release of the information contained within these documents is within the 'public interest':

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
  - (ii) *contribute to positive and informed debate on important issues or matters of public interest; and*
  - (viii) *reveal the reason for a government decision and any background or contextual information that informed the decision.*

Having considered the factors identified as relevant in this matter, I consider that release of the information contained in the documents may contribute to positive and informed debate on workers' compensation cover for family day-care educators. I consider there is a public interest where the Minister may declare classes of people to be covered for workers' compensation. I am satisfied that the public interest in increasing transparency and accountability of the Directorate carries significant weight in favour of release.

The documents include the reasons why adequate workers' compensation is important especially in supporting workers through what can be difficult times and the reasons why family day-care educators have now been declared covered by workers' compensation. I believe the documents will provide you with background and contextual information that informed the Government's decision to declare family day-care workers to be workers employed for the *Workers Compensation Act 1951*.

*Factors favouring non-disclosure (Schedule 2 section 2.2)*

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors in favour of non-disclosure are relevant to determine if release of the information contained within these documents is within the 'public interest'.

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
  - (ii) *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004;*
  - (xi) *prejudice trade secrets, business affairs or research of an agency or person.*

When considering the documents and factors in favour of non-disclosure, I have considered the personal information contained in the documents, including names, contact information (mobile phone numbers, email addresses). I consider it is unreasonable to release the names and contact information of individuals that are not ACT Government employees as this is personal information that is not publicly available. I am satisfied that information regarding individual's identity is personal information and that releasing this information may prejudice the protection of the individual right to privacy or any other right under the *Human Rights Act 2004*.

I have also considered the impact that disclosing the information related to Genesis Family Day Care Services' business affairs. In the case of *Re Mangan and The*

*Treasury* [2005] AATA 898 the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'. Schedule 2 section 2.2 allows for government information to be withheld from release if disclosure of the information could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person.

Having reviewed the documents identified, I am satisfied that the release of certain information could prejudice Genesis Family Day Care Services' business affairs. This includes admin fee percentage figures paid by educators and hourly rates. The information is related to the operational cost of this business and the release of such information may adversely impact the current and future business activities of the business.

Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that is not in the public interest to release, while releasing the rest of the documents will ensure the intent of the Act is met and will provide you with access to the majority of information held by CMTEDD within the scope of your request.

Folios 1-3, 6-8, 12-16 (Schedule 1), 17, 18, 19, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 44-47, 50-53, 55-57, 59-61 of the identified documents contain information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act.

### **Additional Information**

Folio 54 is an incomplete draft that has not been finalised.

### **Charges**

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are applicable for this request because the total number of folio's to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107 (2)(e) of the Act.

### **Online publishing – Disclosure Log**

In accordance with section 28 of the Act, CMTEDD maintains an online record of access applications in the form of a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 25 October 2018. Your personal contact details will not be published.

The CMTEDD disclosure log is at <http://www.cmd.act.gov.au/functions/foi/disclosure-log>.

### **Ombudsman Review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act

within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601  
Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

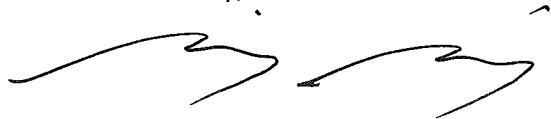
### **ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely,



Daniel Riley  
Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate

22 October 2018



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
	All documents related Notifiable Instrument NI2018-415. This may include but is not limited to, correspondence, policy documents or discussions, meeting notes, Ministerial briefs, and consultation regarding the changes effected in or relating to the Notifiable Instrument.	CMTEDDDFOI2018-0245

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-7	Ministerial Brief CMTEDD2018/2903	6 Jul 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
2	8	MLA Letter	12 Jul 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
3	9-11	Ministerial Brief – CMTEDD2018/3875	30 Jul 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
4	12-16	Email Chain - RE: Family Day Care	7-22 Aug 2018	Exempt	Schedule 1 – Legal Professional Privilege	No
5	17-18	Letter	7 Aug 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
6	19-40	Various Letters – Workers Compensation Insurance -Approved family day care and Approved in-home care services (duplicate attachments removed)	8 Aug 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
7	41-43	Email – RE: Family Day Care and In-Home Carers	9 Aug 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
8	44-51	Email - Re: Work Safety Council Submission - Genesis Family Day Care Services	14 Aug 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
9	52-53	Email - FW: Clarification on Workers Compensation Insurance	16 Aug 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
10	54	Guidance Note	Aug 2018	Full Release	N/A	Yes
11	55-60	Ministerial Brief – CMTEDD2018/4323	6 Sep 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
12	61	MLA Letter	6 Sep 2018	Partial Release	Sch 2 s2.2 (a)(ii)	Yes
<b>Total No of Docs</b>						
12						





Chief Minister, Treasury and Economic Development Directorate

UNCLASSIFIED

To: Minister for Workplace Safety and Industrial Relations

Tracking No.: CMTEDD2018/2903

Cc: Chief Minister

From: Executive Director, Workplace Safety and Industrial Relations

Subject: Ministerial Correspondence – Sch 2.2(a)(ii) – Workers' Compensation Requirements for Family Day Care Educators

Critical Date: 7 July 2018

Critical Reason: To respond to Ministerial correspondence in a timely manner.

• UT *W 2.7.18*

Purpose

To respond to a letter from Sch 2.2(a)(ii) Genesis Family Day Care Services, which is seeking the removal of the requirement for workers' compensation cover for Family Day Care Workers in the ACT.

Recommendations

That you:

- 1. sign the response to Sch 2.2(a)(ii) Attachment A); and Signed / Please Discuss
- 2. agree to consultation with the Work Safety Council on the question of whether family daycare and in-home care workers should be covered for workers' compensation in the ACT.

Agreed/ Not Agreed/ Please Discuss

Rachel Stephen-Smith MLA ..... *RSS* ..... 6/7/18

Minister's Office Feedback

UNCLASSIFIED

### Background

1. In his correspondence, **Sch 2.2(a)(ii)** requests legislative reforms to:
  - a. deem family daycare workers not to be employees for the purposes of workers' compensation law (i.e. classify them as self-employed contractors); and
  - b. establish a mandatory sickness and income protection insurance scheme for these people, which would be funded by a levy on the organisations that broker their services.
2. An underlying assumption in his proposal is that family daycare providers are currently acting as agents for, rather than employers of, family daycare and in-home care workers.

### Issues

3. **Sch 2.2(a)(ii)** proposal would not be consistent with Government policy, which provides compulsory workers' compensation cover for employees, but does not provide a statutory scheme for self-employed people.
4. There are however provisions in the Workers Compensation Act for the Minister to deem classes of people as employees and thus provide them with access to workers' compensation.
5. Family daycare workers were one such class of person. In 2006 the Government legislated to declare workers engaged under the *Family Day Care (Australian Capital Territory) Award 1999* to be workers for the purposes of workers' compensation.
6. It was necessary to deem coverage in this way because the nature of family daycare and in-home care work resembled independent contracting (for example providing own plant and equipment) and consequently there was uncertainty about whether the normal definition of employee would include them.
7. In 2011 the Award was repealed by the passage of the *Education and Care Services National Law (ACT) Act 2011* (the Education and Care Act). One of the effects was the removal of deemed workers' compensation coverage.
8. Although the 2011 reforms contemplated a number of changes to employment arrangements in the sector, there is no evidence that the removal of workers' compensation coverage was intentional.
9. In the intervening years, around half of the Territory's 13 family daycare providers have continued to purchase workers' compensation insurance and the others have not.
10. This arrangement is inequitable, appears to have been unintentional and has introduced a risk that workers' compensation benefits would not be paid in the event of an injury, even if a policy is in place, for example if an insurer finds that the injured person is not technically a worker.

11. Given the variety and changing nature of employment arrangements in the sector and the likely cost impacts of any response, it is proposed that the views of the Work Safety Council be sought ahead of recommending a policy.
12. A response to **Sch 2.2(a)(ii)** has been drafted for your consideration at Attachment B.

**Financial Implications**

13. None from this briefing – however any legislative remedy for the issue identified would have cost implications. These will be investigated as part of the proposed Work Safety Council consultation.

**Consultation**

Internal

14. Nil.

Cross Directorate

15. Nil.

External

16. Nil.

**Benefits/Sensitivities**

- 17.

**Media Implications**

18. Nil.

Signatory Name:	Michael Young	Phone:	6205 3095
Action Officer:	Kerry Van De Laarschot	Phone:	6205 0861

**Attachments**

Attachment	Title
Attachment A	Letter from <b>Sch 2.2(a)(ii)</b>
Attachment B	Draft response to <b>Sch 2.2(a)(ii)</b>



Genesis Family Day Care Services.

[ABN: 96 252 093 429]

1 Diltmer Place, Fadden ACT 2904

Tel: 02 6291 7101

Email: [info@genesisdcs.com.au](mailto:info@genesisdcs.com.au)

[www.genesisdcs.com.au](http://www.genesisdcs.com.au)

The Hon Andrew Barr, MLA  
Chief Minister

The Hon Ms Rachel Stephen-Smith, MLA  
Minister for Disability, Children & Youth  
Minister for Workplace Safety & Industrial Relations

1 June 2018

Dear the Hon Mr Barr and the Hon Ms Stephen-Smith

I am writing regarding Section 16A (amended in 2006) of the ACT *Workers Compensation Act 1951* (the Act) related to self-employed Family Day Care (FDC) Educators.

**Request:**

I respectfully ask the ACT Government to:

- **remove the requirement** for workers compensation for self-employed Family Day Care Educators; and
- **establish a framework** to provide affordable 'accident and sickness income protection insurance' for all self-employed Family Day Care Educators with mandatory co-contribution from FDC Services

**Background:**

While many sections of the ACT *Workers Compensation Act 1951* have been reviewed and the Act amended a number of times in the past 10 years, **Section 16A has not been reviewed since 2006** despite enormous changes in the family day care sector.

The family day care landscape has changed dramatically since 2006 when it was primarily provided through government and community based (not-for-profit) services with most services "employing" the family day care educators.

Currently, the sector is much more diverse with many not-for-profit, community and private family day care providers, and the most common operating model for both the private and community-based services is to "engage" educators as "independent self-employed contractors carrying out business in their own home".

The Service receives child care subsidies from Centrelink on behalf of the parents and pass them on to the Educators.

Within broad parameters set by the Services, each FDC Educator:

- set their own fees
- choose their own work hours
- collect the gap fees (i.e. full fee less subsidies) directly from the parents; and
- pay an admin fee to the Service

This operating model is approved by both Commonwealth and state/territory governments administering the *Education and Care National Law* and the *Family Assistance Law*.

FDC Services are required under the *Education and Care National Law* and *Family Assistance Law* to perform legal, regulatory, and quality monitoring responsibilities with respect to the education and care provided by FDC Educators.

FDC Services also process time-sheets and payments, assess Educators' homes and ensure they are suitable, help ensure Educators have access to professional development, mentor Educators, and provide assistance with planning and documenting educational programs.

Issues:

There is clearly a lack of clarity and inconsistency in the application of the legislative provision related to Workers Compensation for self-employed family day care Educators in the ACT.

*(i) Calculation of workers compensation premiums in the absence of wages / salaries*

The Services **do not pay wages or salaries** to the Educators.

The FDC Services simply pass on the child care subsidies from Centrelink to the Educators. They have **no control** over the amount of subsidies received on behalf of the families as the amounts are determined by Centrelink based on each family's circumstances.

The Services do not make any other payment to Educators.

It is the **FDC Educators who pay the Service** an admin fee.

Hence, the calculation of workers compensation premium as a percentage of wages clearly **CANNOT** apply for self-employed FDC Educators, and the current method of calculating premiums appears arbitrary.

*(ii) Not all FDC Services pay workers compensation premiums*

There is also no uniform applicability of workers compensation provisions within the ACT for FDC services.

There are a number of FDC services operating in the ACT that do not employ FDC Educators but have self-employed FDC Educators registered with them.

Among these Services, only some FDC services are required to pay workers compensation - It appears that only Genesis Family Day Care Services (a private entity) and **Sch 2.2(a)(ii)** are required to provide workers compensation cover for the self-employed FDC Educators in the ACT.

The Minister's declaration in 2006 requires **Sch 2.2(a)(ii)** to pay workers compensation insurance for the self-employed FDC educators.

When we sought independent legal advice on this issue, we were advised there was **no legislative basis** for us to provide workers compensation cover for the self-employed family day care Educators.

However, when we conveyed this advice to our Insurer, it was passed on to Worksafe ACT who advised that the legislation covers all self-employed FDC Educators in the ACT and that the Service should provide workers compensation cover. We were advised that if Service did not comply, then it would be forced to do so through a Minister's Declaration. Hence, we complied.

#### *(iii) Workers compensation costs borne by Educators*

The Services charge on average <sup>Sch 2.2(a)(vi)</sup> per cent of the Educator's fee income as admin fee to meet their staff (Coordinators, admin staff) and other costs.

The workers compensation premiums are in effect paid by Educators, which add another <sup>Sch 2.2(a)(vi)</sup> per cent to the admin fees, leaving Educators with just <sup>Sch 2.2(a)(vi)</sup> of their total income before any of their own expenses or tax.

Workers compensation premiums are significant costs to the Service and is second only to employee remuneration (Coordinators & Admin staff).

The Service tries to keep the admin fee low and has not increased fees since commencement in 2015, so the Educators can keep their fees reasonable and the parents can access affordable care.

However, low fees will no longer be sustainable with substantial changes to both *Education and Care National Law* (changes effective Oct 2017 & Feb 2018) and the *Family Assistance Law* (Jul 2018 & Jan 2019) imposing significant administration, system and compliance costs on Services.

#### *(iv) Alternative to workers compensation*

Our own experience suggests there is very little, if any, support from the Educators for the workers compensation cover.

On the contrary, the Educators have repeatedly asked the Service to assist them in procuring subsidised accident and sickness income protection insurance.

We believe that the best way to support self-employed FDC Educators, who are mostly women and have few other means to support themselves in the event of sickness or accident, is to facilitate affordable 'accident and sickness income protection insurance' cover.

Unlike employees who will have access to paid personal and annual leave, the self-employed FDC Educators have no means of support in the event of sickness or accident outside work hours.

We believe subsidised accident and sickness income protection insurance will go a long way in providing the necessary peace of mind and financial security for self-employed FDC Educators.

By way of example, when one of our Educators fell ill early this year and was hospitalised, the Service provided substantial financial support (non-repayable) over 3 week period to help the Educator. However, such a measure is not sustainable especially for a small Service like ours. On the other hand, the only inquiry for claiming workers compensation came from an Educator who had worked with the Service for a total of less than 4 weeks and had performance issues.

**Proposal:**

I respectfully ask that the ACT Government **remove the requirement for workers compensation for self-employed FDC Educators;** and consider establishing a framework for mandatory contribution from FDC services (i.e. similar to employer contribution) to provide **affordable 'accident and sickness income protection insurance'** for all self-employed Family Day Care Educators.

Look forward to your urgent consideration of this request.

Kind regards

**Sch 2.2(a)(ii)**

CEO / Director  
Genesis Family Day Care Services  
T: 02 6291 7101 M: 0457 522 198  
A: 1 Dittmer Place, ACT 2904  
E: [info@genesissfdc.com.au](mailto:info@genesissfdc.com.au)



W: [www.genesissfdc.com.au](http://www.genesissfdc.com.au)



## Rachel Stephen-Smith MLA

Member for Kurrajong

Minister for Community Services and Social Inclusion

Minister for Disability, Children and Youth

Minister for Aboriginal and Torres Strait Islander Affairs

Minister for Multicultural Affairs

Minister for Workplace Safety and Industrial Relations

17 JUL 2018

**Sch 2.2(a)(ii)**

[info@genesistfdc.com.au](mailto:info@genesistfdc.com.au)

Dear **Sch 2.2(a)(ii)**

Thank you for your letter to the Chief Minister and me about workers' compensation cover for family day-care educators. I am replying on behalf of the ACT Government as the matters you raise fall within my portfolio responsibilities.

The ACT Government considers providing adequate workers' compensation as an important part of a strong community in order to support workers through what can be difficult times. Where there is a public interest, the Minister may declare classes of people to be covered for workers' compensation. As you are aware, this was done previously for certain types of family daycare and in-home care workers in 2006.

While these classes of workers are not currently declared, I have directed departmental officials to consult with the ACT Work Safety Council about this issue and to recommend any necessary changes that would provide certainty for the industry. While I appreciate your feedback, it is important that workers are provided appropriate and adequate levels of coverage in respect of workers' compensation.

The ACT Government does not operate any mandatory sickness and income protection scheme for self-employed people. While income protection and other insurance products of that nature are available commercially, purchasing such a product is optional.

If you have any questions in relations to any of this please contact Mr Bill Smith, Senior Manager, Regulatory Policy on 02 6205 0917 or [bill.smith@act.gov.au](mailto:bill.smith@act.gov.au).

Thank you for taking the time to write to the Chief Minister and myself in relation to this important matter.

Yours sincerely

Rachel Stephen-Smith MLA

### AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601, Australia  
Phone +61 2 6205 2661

GPO Box 1020, Canberra ACT 2601, Australia  
Email [Stephen-Smith@act.gov.au](mailto:Stephen-Smith@act.gov.au)



@RachelSS\_MLA



rachelSSMLA



Chief Minister, Treasury and Economic  
Development Directorate

UNCLASSIFIED

**To:** Minister for Workplace Safety and Industrial  
Relations

Tracking No.: CMTEDD2018/3875

**Cc:** Chief Minister

**From:** Executive Director, Workplace Safety and Industrial Relations

**Subject:** Workers' compensation requirements for Family Day Care Educators and  
In-home Care Workers

**Critical Date:** 26 July 2018

**Critical Reason:** To ensure that Family Day Care Educators and In-home Care Workers are  
covered for workers' compensation

• UT

*JV 24.7.18*

**Purpose**

To declare all people engaged by an approved family day care service or an approved  
in-home care service as workers of the service for the purposes of the *Workers  
Compensation Act 1951* (the Act).

**Recommendations**

That you:

1. **agree** to declare all people engaged by an approved family day care service or an  
approved in-home care service as workers of the service;

~~Agreed~~/Not Agreed/ Please Discuss

2. **agree** to allow all uninsured approved family day care services until  
1 September 2018 to obtain a workers' compensation policy; and

~~Agreed~~/Not Agreed/ Please Discuss

3. **sign** the attached Workers Compensation (Family Day Care and In-Home Care)  
Declaration.

~~Signed~~/Please Discuss

SIGNED 30/7

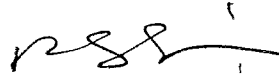
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4. **agree** for the Workplace Safety and Industrial Relations Division to consult with key stakeholders, including the ACT Work Safety Council, on options to amend the Act to deem all people engaged by an approved family day care service or an approved in-home care service as workers of the service for the Act.

Agreed / Not Agreed / Please Discuss

Rachel Stephen-Smith MLA .....



30/7/18

Minister's Office Feedback

Please double check instrument - Par 9 says there are 13 providers, but instrument only lists 11 services. → Addressed 30/7, thank you!

**Background**

5. As previously advised (CMTEDD2018/2903), in 2006 the Government legislated to declare workers engaged under the *Family Day Care (Australian Capital Territory) Award 1999* to be workers for the purposes of workers' compensation.
6. In 2011, the *Family Day Care (Australian Capital Territory) Award 1999* was repealed and the *Education and Care Services National Law (ACT) Act 2011* (the Education and Care Act) was introduced.
7. One of the effects of the introduction of the Education and Care Act was the removal of deemed workers' compensation coverage for family day care and approved in-home carer's.
8. There is no evidence that the removal of workers' compensation coverage was intentional and it is not consistent with Government policy.
9. At present around half of the Territory's 13 family day care providers have workers' compensation insurance. ||

**Issues**

10. There are provisions in the Act for the Minister to deem family day care and in-home care providers as workers, which in effect will provide them with access to workers' compensation.
11. To ensure the intention of the 2006 reforms are met and all Government approved family day care and in-home care providers are covered for workers' compensation, we now attach Workers Compensation (Family Day Care and In-Home Care) Declarations for your signature at Attachment A.
12. It is proposed that the Declarations are effective from 1 September 2018 so as to allow sufficient time for providers to obtain a workers' compensation policy.
13. The Executive Director, Workplace Safety and Industrial Relations (WSIR) will write to each family day and in-home care provider to advise them of this decision.

UNCLASSIFIED

14. Although the declarations resolve the current issue in the short term, it is possible a similar issue (i.e. with non-declared providers) may arise in the future if new providers commence operation the Territory without WSIRs knowledge. On this basis your agreement is being sought to commence consultation with key stakeholders on amending the Act to enshrine workers' compensation coverage for family day care workers in the Act.

**Financial Implications**

15. There will not be any impact on the Territory budget, however there will be a cost to all uninsured providers in obtaining a workers' compensation premium of approximately 3% of declared wages.

**Consultation**

Internal

16. Nil.

Cross Directorate

17. Nil.

External

18. Nil.

**Benefits/Sensitivities**

19. As previously advised, the apparently unintentional impact of the 2011 Education and Care Act reforms has resulted in:
- a. inconsistent approaches by industry, with approximately half of the ACT providers operating on the assumption that family daycare workers are entitled to workers' compensation as per longstanding policy;
  - b. a risk that insurers may not honour workers' compensation policies for family daycare workers as they are not technically classified as workers for the purposes of the Workers' Compensation Act.

**Media Implications**

20. Nil.

Signatory Name: Michael Young Phone: 6205 3095  
Action Officer: Kerry Van De Laarschot Phone: 6205 0861

**Attachments**

Attachment	Title
Attachment A	Declaration - ACT Family Day Care Providers

# Schedule 1 - LPP

# Schedule 1 - LPP

# Schedule 1 - LPP

# Schedule 1 - LPP

# Schedule 1 - LPP





**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## Sch 2.2(a)(ii)

Dear **Sch 2.2(a)(ii)**

Thank you for your email to Mr Bill Smith of 26 July 2018 enclosing your submission for referral to the ACT Work Safety Council.

I can confirm that your submission will be provided to the ACT Work Safety Council for consideration at its next meeting September 2018.

In the interim, to ensure equity across the industry, the Minister for Workplace Safety and Industrial Relations has declared that all individuals engaged by an Approved family day care or an Approved in-home care service are workers for the purposes of the *Workers Compensation Act 1951*, at Attachment A.

The Declaration is effective from 1 September 2018 to allow all family day care and in-home services who do not have a workers' compensation policy sufficient time to purchase one.

Should there be any further developments following consultation with the ACT Work Safety Council, I will write to you.

Yours faithfully

Kerry Van De Laarschot  
Manager  
Workers' Compensation  
Workplace Safety and Industrial Relations

7 August 2018

Australian Capital Territory

# Workers Compensation (Family Day Care and In-Home Care) Declaration 2018 (No 1)

Notifiable instrument NI2018-x

made under the

*Workers Compensation Act 1951*, section 16A Family day care carers

---

## 1 Name of instrument

This instrument is the *Workers Compensation (Family Day Care and In-Home Care) Declaration 2018*.

## 2 Commencement

This instrument commences on 1 September 2018.

## 3 Declaration

I declare individuals engaged by an approved family day care service or an approved in-home care service operated by any of the following services:

- ACT Family Day Care
- Amazing Family Day Care Pty Ltd
- Early Sunshine Family Day Care
- Eden Family Day Care
- Genesis Family Day Care
- Headstart Family Daycare Canberra
- Inspired Family Day Care ACT
- Kiddie cove family day care
- Nefe's Family Day Care
- Woden Community Service Family Day Care
- Young Women's Christian Association Family Day Care

to be workers employed by that service for the *Workers Compensation Act 1951*.



Rachel Stephen-Smith  
Minister for Workplace Safety and Industrial Relations



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

**Sch 2.2(a)(ii)**

Dear Sir/Madam

## **Workers' Compensation Insurance – Approved family day care and Approved in-home care services**

I am writing to advise you of a recent decision regarding workers' compensation obligations for approved family day care and approved in-home care services.

In 2006 the ACT Government introduced legislation to ensure that all government approved family day care and in-home carers in the ACT were able to access workers' compensation entitlements.

In the period since, a range of practices have emerged and as a result there is some uncertainty about whether workers' compensation cover should be provided to approved family day care and approved in-home care service workers.

To clarify the issue and ensure workers' compensation cover for all individuals registered with a government approved family day care service, the Minister for Workplace Safety and Industrial Relations has declared that all individuals engaged by an approved family day care or an approved in-home care service are workers for the purposes of the *Workers Compensation Act 1951* (Attachment A).

Given **Sch 2.2(a)(ii)** is registered with the Australian Children's Education and Care Quality Authority (ACECQA) as an approved family day care service in the ACT, these changes will apply to you.

The effect of the declaration is that **Sch 2.2(a)(ii)** is now required to obtain a workers' compensation policy to cover all providers within your service.

As you will note, the declaration is effective from 1 September 2018. A list of ACT approved workers' compensation insurers and their contact details is attached for your assistance at Attachment B.

If for any reason, you have ceased operating a family day care service or in-home care service, you will need to advise the ACECQA so that you can be removed from the register.

If you have any questions or would like to discuss the matter further, please do not hesitate to contact Ms Kerry Van De Laarschot on 6205 0861 or [kerry.vandelaarschot@act.gov.au](mailto:kerry.vandelaarschot@act.gov.au).

Yours sincerely



Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018

# Workers Compensation (Family Day Care and In-Home Care) Declaration 2018 (No 1)

Notifiable instrument NI2018–415

made under the

*Workers Compensation Act 1951*, section 16A Family day care carers

---

## 1 Name of instrument

This instrument is the *Workers Compensation (Family Day Care and In-Home Care) Declaration 2018 (No 1)*\*.

## 2 Commencement

This instrument commences on 1 September 2018.

## 3 Declaration

I declare individuals engaged by an approved family day care service or an approved in-home care service operated by any of the following services:

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- Amazing Family Day Care Pty Ltd
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- Eden Family Day Care
- Genesis Family Day Care
- Headstart Family Daycare Canberra
- Inspired Family Day Care ACT
- Kiddie cove family day care
- Nefe's Family Day Care
- Woden Community Service Family Day Care
- Young Women's Christian Association Family Day Care

to be workers employed by that service for the *Workers Compensation Act 1951*.

Rachel Stephen-Smith  
Minister for Workplace Safety and Industrial Relations  
30 July 2018

\*Name amended under Legislation Act, s 60

<u>INSURER</u>	<u>ADDRESS</u>	<u>PHONE NUMBER</u>
Allianz Australia Insurance Ltd	PO Box 262 Canberra City 2601	(02) 6246 1404
CGU Insurance Ltd	Level 2 6 National Circuit Barton ACT 2600	(02) 6240 4770
GIO General Ltd	PO Box 47 Woden ACT 2606	(02) 6281 8801
Guild Insurance	Suite 4 31 Thesiger Court Deakin ACT 2600	(02) 6124 2222
QBE Insurance	Level 7 220 Northbourne Ave Braddon ACT 2612	(02) 6201 3311
Zurich Insurance	Ground Floor 99 Northbourne Ave Turner ACT 2612	(02) 6247 3766



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

## Sch 2.2(a)(ii)

Dear Sir/Madam

### **Workers' Compensation Insurance – Approved family day care and Approved in-home care services**

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The effect of the declaration is that **Sch 2.2(a)(ii)** is now required to obtain a workers' compensation policy to cover all providers within your service.

As you will note, the declaration is effective from 1 September 2018. A list of ACT approved workers' compensation insurers and their contact details is attached for your assistance at Attachment B.

If for any reason, you have ceased operating a family day care service or in-home care service, you will need to advise the ACECQA so that you can be removed from the register.

If you have any questions or would like to discuss the matter further, please do not hesitate to contact Ms Kerry Van De Laarschot on 6205 0861 or [kerry.vandelaarschot@act.gov.au](mailto:kerry.vandelaarschot@act.gov.au).

Yours sincerely



Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018





**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

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Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Young', written over the printed name.

Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

## Sch 2.2(a)(ii)

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In 2006 the ACT Government introduced legislation to ensure that all government approved family day care and in-home carers in the ACT were able to access workers' compensation entitlements.

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To clarify the issue and ensure workers' compensation cover for all individuals registered with a government approved family day care service, the Minister for Workplace Safety and Industrial Relations has declared that all individuals engaged by an approved family day care or an approved in-home care service are workers for the purposes of the *Workers Compensation Act 1951* (Attachment A).

Given **Sch 2.2(a)(ii)** is registered with the Australian Children's Education and Care Quality Authority (ACECQA) as an approved family day care service in the ACT, these changes will apply to you.

The effect of the declaration is that **Sch 2.2(a)(ii)** is now required to obtain a workers' compensation policy to cover all providers within your service.

As you will note, the declaration is effective from 1 September 2018. A list of ACT approved workers' compensation insurers and their contact details is attached for your assistance at Attachment B.

If for any reason, you have ceased operating a family day care service or in-home care service, you will need to advise the ACECQA so that you can be removed from the register.

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Yours sincerely



Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

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Given **Sch 2.2(a)(ii)** Canberra is registered with the Australian Children's Education and Care Quality Authority (ACECQA) as an approved family day care service in the ACT, these changes will apply to you.

The effect of the declaration is that **Sch 2.2(a)(ii)** Canberra is now required to obtain a workers' compensation policy to cover all providers within your service.

As you will note, the declaration is effective from 1 September 2018. A list of ACT approved workers' compensation insurers and their contact details is attached for your assistance at Attachment B.

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Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Young', written over a faint circular stamp or watermark.

Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

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Yours sincerely



Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018





**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

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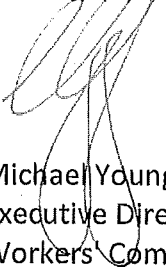
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Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

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Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

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Yours sincerely



Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD2018/2903

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Yours sincerely,



Michael Young  
Executive Director  
Workers' Compensation Policy  
Workplace Safety and Industrial Relations Division

8 August 2018



**From:** Jason Goodfellow  
**To:** [VanDeLaarschot, Kerry](#)  
**Cc:** [Greg Mathews](#); [Amanda C Hawke](#)  
**Subject:** RE: Family Day Care and In-Home Carers [SEC=UNCLASSIFIED]  
**Date:** Thursday, 9 August 2018 10:34:20 AM  
**Attachments:** [image001.png](#)

---

Thanks Kerry,

It looks like the policies identified in the CGU portfolio have now been approved by the Minister.

**Sch 2.2(a)(ii)**

We look forward to supporting any new cover requests.

Any concerns please do not hesitate to call.

Kind regards,

---

**Sch 2.2(a)(ii)**

Senior Underwriter, Workers Compensation ACT  
Complex and Tailored Underwriting Solutions  
Australian Business Division

**Sch 2.2(a)(ii)**

[cgu.com.au](http://cgu.com.au)  
[facebook.com/cguinsurance](https://facebook.com/cguinsurance)  
[twitter.com/cguinsurance](https://twitter.com/cguinsurance)

CGU is backed by IAG

2015 & 2016 *Insurance Business* Insurer of the Year  
2015 & 2016 *NIBA* General Insurer of the Year  
2015 *Australian Industry Awards* Large General Insurer of the Year



**From:** **Sch 2.2(a)(ii)**

**Sent:** Wednesday, 8 August 2018 3:30 PM

**Sch 2.2(a)(ii)**

**Subject:** Fwd: Family Day Care and In-Home Carers [SEC=UNCLASSIFIED]

Sent from my iPhone

Begin forwarded message:

Dear Insurers,

I am writing to inform you of a recent Workers Compensation Declaration which has been issued.

As you are aware there are provisions in the *Workers Compensation Act 1951* (section 16A) for the Minister to deem classes of people as employees and thus provide them with access to workers' compensation.

In 2006 the Government legislated to declare workers engaged under the *Family Day Care (Australian Capital Territory) Award 1999* to be workers for the purposes of workers' compensation.

Two services which did not come under the award were declared via a *Workers Compensation (Family Day Care and In-Home Care) Declaration* to ensure equity across the industry: <http://www.legislation.act.gov.au/ni/2006-351/default.asp>

In 2011 the *Family Day Care (Australian Capital Territory) Award 1999* was repealed by the passage of the *Education and Care Services National Law (ACT) Act 2011*. One of the effects was the removal of deemed workers' compensation coverage for those who were previously declared under the Award.

This has recently been brought to the attention of the Minister for Workplace Safety and Industrial Relations. As a result, the Minister has made a further declaration to cover the remaining government approved family day care service providers as workers of the family day care service they are registered with: <http://www.legislation.act.gov.au/ni/2018-415/default.asp>

We will be writing to all services affected in the coming week advising them of this obligation and providing contact details for all approved workers compensation insurers in the ACT (example of letter attached).

As a result of this, you may be contacted by Family Day Care Services seeking a workers' compensation policy to cover all individuals who are registered through their service.

A list of all government approved family day care services can be found here: [https://www.acecqa.gov.au/resources/national-registers/services?s=&f%5B0%5D=service\\_state%3AACT&f%5B1%5D=service\\_search\\_type%3AFamily%20Day%20Care](https://www.acecqa.gov.au/resources/national-registers/services?s=&f%5B0%5D=service_state%3AACT&f%5B1%5D=service_search_type%3AFamily%20Day%20Care)

If you have any questions, or wish to discuss the matter further, please do not hesitate to contact me.

Regards

Kerry

Kerry Van De Laarschot | Manager, Workers' Compensation Policy & Workplace Relations  
Phone: 02 6205 0861 | Email: [kerry.vandelaarschot@act.gov.au](mailto:kerry.vandelaarschot@act.gov.au)  
Workplace Safety and Industrial Relations Division  
Chief Minister, Treasury and Economic Development Directorate | ACT Government  
Level 1 221 London Circuit, Canberra | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**From:** VanDeLaarschot, Kerry  
**To:** "Genesis FDC"  
**Subject:** Work Safety Council Submission - Genesis Family Day Care Services [SEC=UNCLASSIFIED]  
**Date:** Tuesday, 14 August 2018 11:40:00 AM  
**Attachments:** TRSY18 240843 CMTEDD2018 3875 Signed instrument.pdf

---

Dear Mr [REDACTED]

Thank you for your further questions below.

I have responded in red.

Regards

Kerry

Kerry Van De Laarschot | Manager, Workers' Compensation Policy & Workplace Relations  
Phone: 02 6205 0861 | Email: [kerry.vandelaarschot@act.gov.au](mailto:kerry.vandelaarschot@act.gov.au)  
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---

**From:** Genesis FDC [<mailto:info@genesishfdc.com.au>]  
**Sent:** Tuesday, 7 August 2018 1:35 PM  
**To:** VanDeLaarschot, Kerry <[Kerry.VanDeLaarschot@act.gov.au](mailto:Kerry.VanDeLaarschot@act.gov.au)>  
**Subject:** Re: Work Safety Council Submission - Genesis Family Day Care Services [SEC=UNCLASSIFIED]

Dear Mr Van De Laarschot

Thank you for your advice. Please send us a copy of the Ministers declaration (there was no Attachment A to the email).

Please also advise us **asap** as to:

(i) how and when the ACT Government will inform all approved family day services in the ACT of the Minister's Declaration for them to comply with the requirement from 1 September 2018. A letter will be posted to all ACT approved services in the next few days.

(ii) how the workers compensation premium is to be calculated - i.e. what are the payments that are to be Please find attached the link to the ACT Earnings and Wages Guide: [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/2989/~-/workers-compensation#!tabs-12](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2989/~-/workers-compensation#!tabs-12)

You may also seek further advice from insurers when obtaining a quotation.

(iii) if there has been any, or will there be any, regulatory impact assessment conducted on the Minister's Declaration? if not, why not? A regulatory impact assessment is not required for a Notifiable Instrument.

Please respond to the above at the earliest and also provide us with the contact details of the Chair of the ACT Work Safety Council. The contact details are:  
[ACTWorkSafetyCouncil.Secretariat@act.gov.au](mailto:ACTWorkSafetyCouncil.Secretariat@act.gov.au)

Regards

**Sch 2.2(a)(ii)**

On 7 Aug 2018, at 1:05 pm, VanDeLaarschot, Kerry  
<Kerry.VanDeLaarschot@act.gov.au> wrote:

Please see attached letter to **Sch 2.2(a)(ii)**

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<scan\_kerry vandelaarschot\_2018-08-07-11-48-51 (002).pdf>

**From:** Sch 2.2(a)(i)  
**To:** VanDeLaarschot, Kerry  
**Subject:** Re: Work Safety Council Submission - Genesis Family Day Care Services [SEC=UNCLASSIFIED]  
**Date:** Tuesday, 14 August 2018 2:35:29 PM  
**Attachments:** Signed Letter to Chief Minister (Request to delay NI415 implementation).pdf

---

Dear Kerry

Thank you for responding and apologies for the inconvenience.

For your information and reference, I have attached a copy of the letter that was delivered to the Chief Minister, the Minister for Workplace Safety and Industrial Relations, and the Leader of the Opposition on this matter. The Notifiable Instrument has significant impact on the ongoing viability of our business and our livelihoods, and we have no choice but to pursue this matter through all available avenues to seek a fair resolution. The letter is self explanatory and focuses on some of the issues that you have attempted to address.

We have previously reviewed the publication you have referred to, and the FDC services that engage self-employed Educators do not pay any monies that are even remotely related to any of the items listed in the publication.

I will have to disagree with your view that notifiable instruments do not require a 'regulatory impact statement'. The Notifiable Instrument is a disallowable instrument and must be tabled in the Legislative Assembly within 6 days of making. RIS is not required only if there has been a comparable level of publication and consultation on the matters covered in the instrument. Part 5 of the *Legislation Act 2001* covers the conditions to be met for making a valid subordinate legislation/ disallowable instrument.

Thank you for your response and kind regards

**Sch 2.2(a)(ii)**

On 14 Aug 2018, at 11:40 am, VanDeLaarschot, Kerry  
<[Kerry.VanDeLaarschot@act.gov.au](mailto:Kerry.VanDeLaarschot@act.gov.au)> wrote:

Dear Sch 2.2(a)(ii)

Thank you for your further questions below.

I have responded in red.

Regards

Kerry

## Sch 2.2(a)(ii)

**Sent:** Tuesday, 7 August 2018 1:35 PM

**To:** VanDeLaarschot, Kerry <[Kerry.VanDeLaarschot@act.gov.au](mailto:Kerry.VanDeLaarschot@act.gov.au)>

**Subject:** Re: Work Safety Council Submission - Genesis Family Day Care Services  
[SEC=UNCLASSIFIED]

Dear Mr Van De Laarschot

Thank you for your advice. Please send us a copy of the Ministers declaration (there was no Attachment A to the email).

Please also advise us **asap** as to:

(i) how and when the ACT Government will inform all approved family day services in the ACT of the Minister's Declaration for them to comply with the requirement from 1 September 2018. A letter will be posted to all ACT approved services in the next few days.

(ii) how the workers compensation premium is to be calculated - i.e. what are the payments that are to be Please find attached the link to the ACT Earnings and Wages

Guide: [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/2989/~workers-compensation#!tabs-12](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2989/~workers-compensation#!tabs-12)

You may also seek further advice from insurers when obtaining a quotation.

(iii) if there has been any, or will there be any, regulatory impact assessment conducted on the Minister's Declaration? if not, why not? A regulatory impact assessment is not required for a Notifiable Instrument.

Please respond to the above at the earliest and also provide us with the contact details of the Chair of the ACT Work Safety Council. The contact details are: [ACTWorkSafetyCouncil.Secretariat@act.gov.au](mailto:ACTWorkSafetyCouncil.Secretariat@act.gov.au)

Regards

## Sch 2.2(a)(ii)

On 7 Aug 2018, at 1:05 pm, VanDeLaarschot, Kerry <[Kerry.VanDeLaarschot@act.gov.au](mailto:Kerry.VanDeLaarschot@act.gov.au)> wrote:

## Sch 2.2(a)(ii)

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<TRSY18 240843 CMTEDD2018 3875 Signed instrument.pdf>





Genesis Family Day Care Services

[ABN: 96 252 093 429]

1 Dittmer Place, Fadden ACT 2904

Tel: 02 6291 7101

Email: [info@genesissfdc.com.au](mailto:info@genesissfdc.com.au)

[www.genesissfdc.com.au](http://www.genesissfdc.com.au)

**To:**

Hon Mr Andrew Barr MLA, Chief Minister

Hon Ms Rachel Stephen-Smith MLA, Minister for Workplace Safety and Industrial Relations

Dear the Hon Mr Barr and the Hon Ms Stephen-Smith

**RE: NOTIFIABLE INSTRUMENT NI2018-415**

We are writing in response to the letter of 8 August 2018 from the Chief Minister's Department regarding the Notifiable Instrument (NI2018-415) made by the ACT Minister for Workplace Safety and Industrial Relations on 30 July 2018.

**Request**

We ask you to urgently amend the Notifiable Instrument NI2018-415 to **delay implementation of the measure to 1 January 2019** and issue a 'regulatory impact statement' to clarify the impacts on Services, Educators and parents.

**Issues**

The ACT Government is well within its right to introduce regulations in the public interest. However, there has to be due process, sufficient consideration of the consequences of such regulations, and reasonable timeframe for businesses and individuals to prepare for the changes.

We believe the Notifiable Instrument has been made without having regard to relevant considerations and processes (Refer Part 5 of *Legislation Act 2001*).

The Notifiable Instrument was made on 30 July and the services were informed of it on 8 August. The Instrument is to come in to effect on 1 September 2018 – with just 3 weeks notice.

No consultation was done, or a regulatory impact statement prepared, despite the significant adverse cost impact on businesses and individuals.

**Consideration of Relevant Information**

- (i) Unlike Community based family day care (FDC) services that have other operational arms (e.g. child care centres, property hire) and capacity to cross subsidise FDC operations, most privately owned FDC services are small businesses with a single line of operation.

- (ii) Except Sch 2.2(a)(ii) the other two community-based services (Sch 2.2(a)(ii)) employ their FDC Educators.
- (iii) Sch 2.2(a)(ii) has been covered under a similar instrument since 2006. Given it is 12 years since that instrument was made, a review of that arrangement would have been useful to assess how the arrangement is working in practice, its effectiveness and the cost-benefit of the arrangement.
- (iv) Such a review prior to issuing the notifiable instrument would also have been useful, given the ACT is a signatory to the 2011 uniform national work health and safety laws and that no other signatory state or territory has similar workers compensation provisions for self-employed family day care Educators in their jurisdictions.

### Business Impact

- (i) Most FDC services' **sole income** is the admin fee charged to the FDC Educators, which is around Sch 2.2(a)(xi) of the Educators' income. If we are to assume that the current **4.65%** workers compensation premium (including DI levy) is to be applied to the FDC Educator's income, that would equate to Sch 2.2(a)(xi) **of the FDC Service's income**.
- (ii) In the case of Genesis Family Day Care Services, we have been operating for the past 2 ½ years with an admin fee of Sch 2.2(a)(xi) **per child** and have never increased the fees.
- (iii) We employ Coordinators & admin staff and also at no additional cost – run a music group and a playgroup for 2 days each week during school term; organise excursions (e.g. bus wash, parks); and conduct annual year end children's concert for the benefit of the families. Even though private, we run the Service as a social enterprise with marginal profitability.
- (iv) Currently, the Service's admin fee is Sch 2.2(a)(xi) of the average Educator fees and under the Minister's 30 July declaration, the workers compensation premium of **4.65%** would account for **41%** of the Service's current **operating budget**. Such a cost impost with less than a month notice is unconscionable for an elected Government.
- (v) Given it is impossible for any service to absorb such a cost at such short notice and at once, the Service will have no choice but to pass on most or all of the cost to Educators.
- (vi) If the full 4.65% workers compensation rate is to be passed on to FDC Educators, it would be equivalent to an increase in **income tax of 4.65% on gross income** (not taxable income) without any commensurate increase in income.
- (vii) When the major parties in the Federal Parliament agree on reducing costs to small businesses and are cutting company taxes, your Government has increased the costs of doing business in the ACT for some entities by over 40% with just 3 weeks notice.

### Correct Wages Declaration and Calculation of Workers Compensation Premiums

- (i) As the Service does not pay self-employed FDC Educators any monies that fall under the usual meaning of "salaries, wages or allowances", there must be **published notification from the Government** as to what payments are to be considered "salaries, wages or allowances" for the purposes of determining the workers compensation premium.

This is fundamental to give effect to the notifiable instrument to avoid any confusion or differential treatment and for all FDC services to comply with the notifiable instrument.

- (ii) There cannot be any implicit or informal expectation on the part of the Government that the determination of what constitute "salaries, wages or allowances" for self-employed FDC Educators be made by insurers or be agreed to between the insurer and businesses. This is a matter for Government and not for insurers or businesses.

As it is now, we cannot include any amount (other than having "zero" amount) as wages and allowances with regard to self-employed FDC Educators in the insurer's annual wages declaration without the Government's published advice on what is to be considered as "salaries, wages or allowances".

### Other Material Considerations

- (i) The effective date for Minister's Declaration of 1 September 2018 is simply not feasible given the current financial pressure on FDC services and Educators with systems difficulties associated with transition to the new child care subsidy.
- FDC Services rely on third party software and there has been significant system issues with many services (and hence Educators) are 3~4 weeks behind in getting their subsidy payments putting enormous financial stress on them.
  - Families have also been unable to make the gap payments to Educators without invoices from Services, placing Educators and services in cash flow difficulty.
- (ii) We ask you to urgently amend the Notifiable Instrument NI2018-415 to delay implementation to 1 January 2019 and give consideration to preparing a 'regulatory impact statement' to give clarity and certainty to the Services, Educators and parents.

Yours sincerely

Sch 2.2(a)(ii)

Sch 2.2(a)(ii)

14/08/2018

Genesis Family Day Care Services  
T: 02 6291 7101 M: 0457 522 198  
A: 1 Dittmer Place, ACT 2904  
E: [info@genesifdc.com.au](mailto:info@genesifdc.com.au)



W: [www.genesifdc.com.au](http://www.genesifdc.com.au)

Cc:  
Hon Mr Alistair Coe MLA, Leader of the Opposition

**From:** VanDeLaarschot, Kerry  
**To:** Sch 2.2(a)(ii)  
**Subject:** FW: Clarification on Workers Compensation Insurance [SEC=UNCLASSIFIED]  
**Date:** Thursday, 16 August 2018 10:03:00 AM  
**Importance:** High

---

Hi Sch 2.2(a)(ii)

The Declaration previously forwarded under cover of our letter of 8 August 2018 declares all educators as workers of Sch 2.2(a)(ii) for the purposes of workers compensation, regardless of whether they are sub-contractors or self-employed.

Your workers compensation policy Sch 2.2(a)(ii) does need to cover all of your educators.

You will need to contact Sch 2.2(a)(ii) to amend your policy to include all family day educators. To do that you will need to have an estimate of the total of your educators annual wages.

If you require any further assistance in amending your policy, your insurer will be able to assist you.

If I can be of any further assistance, please do not hesitate to contact me.

Regards

Kerry

**Kerry Van De Laarschot | Manager, Workers' Compensation Policy & Workplace Relations**  
Phone: 02 6205 0861 | Email: [kerry.vandelaarschot@act.gov.au](mailto:kerry.vandelaarschot@act.gov.au)  
**Workplace Safety and Industrial Relations Division**  
Chief Minister, Treasury and Economic Development Directorate | ACT Government  
Level 1 221 London Circuit, Canberra | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

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**From:** VanDeLaarschot, Kerry  
**Sent:** Thursday, 16 August 2018 9:50 AM  
**To:** Sch 2.2(a)(ii)  
**Subject:** RE: Clarification on Workers Compensation Insurance [SEC=UNCLASSIFIED]

Hi Sch 2.2(a)(ii)

Thank you for your enquiry.

We are writing to all Family Day Care Services to ensure that they have a policy in place, as we have identified a number of services who do not appear to have a policy..

As you have a policy in place covering all of your educators, you do not need to take any action.

Have a fantastic day.

Regards

Kerry

**Kerry Van De Laarschot | Manager, Workers' Compensation Policy & Workplace Relations**  
Phone: 02 6205 0861 | Email: [kerry.vandelaarschot@act.gov.au](mailto:kerry.vandelaarschot@act.gov.au)  
**Workplace Safety and Industrial Relations Division**  
**Chief Minister, Treasury and Economic Development Directorate | ACT Government**  
Level 1 221 London Circuit, Canberra | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

**From:** Sch 2.2(a)(ii)  
**Sch 2.2(a)(ii)**

**Sent:** Wednesday, 15 August 2018 1:33 PM

**To:** VanDeLaarschot, Kerry <[Kerry.VanDeLaarschot@act.gov.au](mailto:Kerry.VanDeLaarschot@act.gov.au)>

**Subject:** Clarification on Workers Compensation Insurance

Dear Kerry,

Sch 2.2(a)(ii) has received a letter on the 8th of August outlining to obtain a workers compensation policy to cover all providers within our service. Sch 2.2(a)(ii) has a current cover under Sch 2.2(a)(ii) as of Sch 2.2(a)(ii)

We would like to have a clarification on whether all educators in our scheme need an individual cover as they are sub-contractors with our service? Or does our service need to have all the educators listed under our policy?

If you need any other information please contact me on Sch 2.2(a)(ii)

Thank You

Sch 2.2(a)(ii)



## Workers Compensation—Family Day Care and In-Home Carers

The *Workers Compensation Act 1951* (the Act) provides workers' compensation entitlements for people who are injured at work in the ACT.

### Are family day care and in home carers covered for Workers Compensation?

In 2006 the ACT Government introduced legislation to ensure that all approved family day care and approved in-home carers in the ACT were covered for workers' compensation purposes.

Section 16A of the Act was introduced to allow the Minister to declare all individuals registered by an *approved family day care* or an *approved in-home care service* as workers for the purposes of the Act.

The Minister may make the declaration at the request of:

- an approved family day care service;
- an approved in-home care service; or
- on the Minister's own initiative.

Since 2006, a range of practices have emerged and as a result there is some uncertainty about whether workers' compensation cover should be provided to approved family day care and approved in-home care service workers.

To clarify the issue and ensure workers' compensation cover for these individuals, the Minister for Workplace Safety and Industrial Relations has declared all individuals registered by an *approved family day care* or *approved in-home care service* as workers for the purposes of the Act.

A copy of the declaration made by the Minister on 30 July 2018 can be found here: <http://www.legislation.act.gov.au/ni/2018-415/default.asp>

A list of approved family day care and in-home care services in the ACT can be found at:

[https://www.acecqa.gov.au/resources/national-registers/services?s=&f%5B0%5D=service\\_state%3AACT&f%5B1%5D=service\\_search\\_type%3AFamily%20Day%20Care](https://www.acecqa.gov.au/resources/national-registers/services?s=&f%5B0%5D=service_state%3AACT&f%5B1%5D=service_search_type%3AFamily%20Day%20Care)

or

<http://ifp.mychild.gov.au/mvc/Search/Advanced>

### For further information

If you have a workers compensation inquiry, contact WorkSafe ACT on 6207 3000.



Chief Minister, Treasury and Economic  
Development Directorate

UNCLASSIFIED

To: Minister for Employment and Workplace  
Safety

Tracking No.: CMTEDD2018/4323

Executive Director, Workplace Safety and Industrial Relations Division

Subject: Workers' compensation requirements for Family Day Care Educators and  
In-home Care Workers – Notifiable Instrument NI2018-415

Critical Date: 5 September 2018

Critical Reason: To respond to **Sch 2.2(a)(ii)** letter

- UT *[Signature]* 3.19.18

**Purpose**

To respond to the letter from Mr **Sch 2.2(a)(ii)** regarding Notifiable Instrument NI2018-415 declaring all people engaged by an approved family day care service or an approved in-home care service as workers of the service for the purposes of the *Workers Compensation Act 1951* (the Act).

**Recommendations**

That you sign the attached letter to **Sch 2.2(a)(ii)**

*with edits to recognise previous convs*  
**Signed** / Please Discuss

Rachel Stephen-Smith MLA ..... *[Signature]* ..... 6/9/18

Minister's Office Feedback

### Background

1. You recently determined (CMTEDD2018/3875) to declare all individuals engaged by an approved family day care service or an approved in-home care service to be workers of the service for the purposes of the *Workers Compensation Act 1951*.
2. Workplace Safety and Industrial Relations Division (WSIR) wrote to all approved family day care services registered with the Australian Children's Education & Care Quality Authority on 8 August 2018, providing them with a copy of Notifiable Instrument 2018-415 (the new Instrument) and reminding them of their obligation to have a workers' compensation policy in place for all family day care educators registered with their service.

### Issues

3. **Sch 2.2(a)(ii)** of Genesis Family Day Care Services has written to you and the Chief Minister (Attachment A), requesting that you delay implementation of the measure to 1 January 2019 and issue a regulatory impact statement to clarify the impact on Services, Educators and parents.
4. The Instrument is not reflective of a new policy. Rather, it confirms the Government's policy decision in 2006. As such, a Regulatory Impact Statement (RIS) is not required under the Legislation Act for the new Instrument. A RIS was completed when all family day care services and approved in-home carers were deemed to be workers for workers' compensation purposes in 2006.
5. As previously advised, the cost to any uninsured providers in obtaining a workers' compensation premium was approximately 3% of declared wages.
6. The new Instrument was notified on 31 July 2018 and commences on 1 September 2018, this allowed any uninsured providers time to obtain a workers' compensation policy.
7. A response to **Sch 2.2(a)(ii)** has been prepared at Attachment B.

### Financial Implications

8. Nil.

### Consultation

#### Internal

9. Nil.

#### Cross Directorate

10. Nil.

#### External

11. Nil.

### Benefits/Sensitivities

12. The unintentional impact of reforms introduced in 2011 under the *Education and Care Services National Law (ACT) Act 2011* has since resulted in the following for the period from 2011 to 1 September 2018:
  - a. inconsistent approaches by industry, with approximately half of the ACT



providers operating on the assumption that family daycare workers are entitled to workers' compensation as per longstanding policy;

- b. a risk that insurers may not honour workers' compensation policies for family daycare workers as they are not technically classified as workers for the purposes of the Workers Compensation Act.

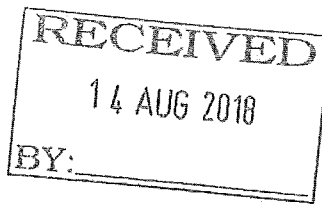
**Media Implications**

13. Nil.

Signatory Name: Michael Young Phone: 6205 3095  
Action Officer: Kerry Van De Laarschot Phone: 6205 0861

**Attachments**

Attachment	Title
Attachment A	Ministerial Correspondence from Sch 2.2(a)(ii)
Attachment B	Draft letter to Sch 2.2(a)(ii)



Genesis Family Day Care Services

[ABN: 96 252 093 429]

1 Dittmer Place, Fadden ACT 2904

Tel: 02 6291 7101

Email: [info@genesissfdc.com.au](mailto:info@genesissfdc.com.au)

[www.genesissfdc.com.au](http://www.genesissfdc.com.au)

**To:**

Hon Mr Andrew Barr MLA, Chief Minister

Hon Ms Rachel Stephen-Smith MLA, Minister for Workplace Safety and Industrial Relations

Dear the Hon Mr Barr and the Hon Ms Stephen-Smith

**RE: NOTIFIABLE INSTRUMENT NI2018-415**

We are writing in response to the letter of 8 August 2018 from the Chief Minister's Department regarding the Notifiable Instrument (NI2018-415) made by the ACT Minister for Workplace Safety and Industrial Relations on 30 July 2018.

**Request**

We ask you to urgently amend the Notifiable Instrument NI2018-415 to **delay implementation of the measure to 1 January 2019** and issue a 'regulatory impact statement' to clarify the impacts on Services, Educators and parents.

**Issues**

The ACT Government is well within its right to introduce regulations in the public interest. However, there has to be due process, sufficient consideration of the consequences of such regulations, and reasonable timeframe for businesses and individuals to prepare for the changes.

We believe the Notifiable Instrument has been made without having regard to relevant considerations and processes (Refer Part 5 of *Legislation Act 2001*).

The Notifiable Instrument was made on 30 July and the services were informed of it on 8 August. The Instrument is to come in to effect on 1 September 2018 – with just 3 weeks notice.

No consultation was done, or a regulatory impact statement prepared, despite the significant adverse cost impact on businesses and individuals.

**Consideration of Relevant Information**

- (i) Unlike Community based family day care (FDC) services that have other operational arms (e.g. child care centres, property hire) and capacity to cross subsidise FDC operations, most privately owned FDC services are small businesses with a single line of operation.

- (ii) Except **Sch 2.2(a)(ii)** the other two community-based services (**Sch 2.2(a)(ii)**) employ their FDC Educators.
- (iii) **Sch 2.2(a)(ii)** has been covered under a similar instrument since 2006. Given it is 12 years since that instrument was made, a review of that arrangement would have been useful to assess how the arrangement is working in practice, its effectiveness and the cost-benefit of the arrangement.
- (iv) Such a review prior to issuing the notifiable instrument would also have been useful, given the ACT is a signatory to the 2011 uniform national work health and safety laws and that no other signatory state or territory has similar workers compensation provisions for self-employed family day care Educators in their jurisdictions.

### **Business Impact**

- (i) Most FDC services' **sole income** is the admin fee charged to the FDC Educators, which is around **Sch 2.2(a)(xi)** of the Educators' income. If we are to assume that the current **4.65%** workers compensation premium (including DI levy) is to be applied to the FDC Educator's income, that would equate to **30~40% of the FDC Service's income**.
- (ii) In the case of Genesis Family Day Care Services, we have been operating for the past 2 ½ years with an admin fee of **Sch 2.2(a)(xi) per child** and have never increased the fees.
- (iii) We employ Coordinators & admin staff and also at no additional cost – run a music group and a playgroup for 2 days each week during school term; organise excursions (e.g. bus wash, parks); and conduct annual year end children's concert for the benefit of the families. Even though private, we run the Service as a social enterprise with marginal profitability.
- (iv) Currently, the Service's admin fee is **Sch 2.2(a)(xi)** of the average Educator fees and under the Minister's 30 July declaration, the workers compensation premium of **4.65%** would account for **41%** of the Service's current **operating budget**. Such a cost impost with less than a month notice is unconscionable for an elected Government.
- (v) Given it is impossible for any service to absorb such a cost at such short notice and at once, the Service will have no choice but to pass on most or all of the cost to Educators.
- (vi) If the full 4.65% workers compensation rate is to be passed on to FDC Educators, it would be equivalent to an increase in **income tax of 4.65% on gross income** (not taxable income) without any commensurate increase in income.
- (vii) When the major parties in the Federal Parliament agree on reducing costs to small businesses and are cutting company taxes, your Government has increased the costs of doing business in the ACT for some entities by over 40% with just 3 weeks notice.

### **Correct Wages Declaration and Calculation of Workers Compensation Premiums**

- (i) As the Service does not pay self-employed FDC Educators any monies that fall under the usual meaning of "salaries, wages or allowances", there must be **published notification from the Government** as to what payments are to be considered "salaries, wages or allowances" for the purposes of determining the workers compensation premium.

This is fundamental to give effect to the notifiable instrument to avoid any confusion or differential treatment and for all FDC services to comply with the notifiable instrument.

- (ii) There **cannot be any implicit or informal expectation** on the part of the Government that the determination of what constitute "salaries, wages or allowances" for self-employed FDC Educators be **made by insurers or be agreed to between the insurer and businesses**. This is a matter for Government and not for insurers or businesses.

As it is now, we cannot include any amount (other than having **"zero" amount**) as wages and allowances with regard to self-employed FDC Educators in the **insurer's annual wages declaration** without the Government's published advice on what is to be considered as "salaries, wages or allowances".

### Other Material Considerations

- (i) The effective date for Minister's Declaration of **1 September 2018** is simply not feasible given the current financial pressure on FDC services and Educators with systems difficulties associated with transition to the new child care subsidy.
- FDC Services rely on third party software and there has been significant system issues with many **services (and hence Educators) are 3~4 weeks behind in getting their subsidy payments putting enormous financial stress on them.**
  - Families have also been unable to make the gap payments to Educators without invoices from Services, placing Educators and services in **cash flow difficulty.**
- (ii) We ask you to urgently amend the Notifiable Instrument NI2018-415 to **delay implementation to 1 January 2019** and give consideration to preparing a 'regulatory impact statement' to give clarity and certainty to the Services, Educators and parents.

Yours sincerely

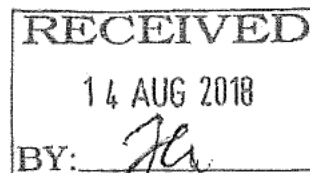
**Sch 2.2(a)(ii)**

08/2018

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Cc:  
Hon Mr Alistair Coe MLA, Leader of the Opposition



## Rachel Stephen-Smith MLA

Minister for Aboriginal and Torres Strait Islander Affairs  
Minister for Disability  
Minister for Children, Youth and Families  
Minister for Employment and Workplace Safety  
Minister for Government Services and Procurement  
Minister for Urban Renewal  
Member for Kurrajong

## Sch 2.2(a)(ii)

Dear Sch 2.2(a)(ii)

Thank you for your further correspondence of 14 August 2018 regarding Notifiable Instrument 2018-415, which clarifies that people engaged in family day care services or approved in-home care services should be treated as workers for the purposes of having access to workers' compensation.

As mentioned in my previous letter, legislative reforms were undertaken in the ACT in 2006 to ensure that all carers employed by an approved family day care service are covered for workers' compensation purposes and a Regulatory Impact Statement was completed as part of that process. Government policy in this regard has not changed. However, it was recently identified that subsequent legislative changes inadvertently created uncertainty in this space.

I recognise that as new family day care services have entered the ACT market and broader education and care reforms have been implemented, some confusion has arisen as to whether providers are required to take out a workers' compensation policy for carers registered through their service. To remove any uncertainty and ensure that all approved family day care services are meeting their workers' compensation obligations, I declared Notifiable Instrument 2018-415 on 30 July 2018. This instrument reconfirms the Government's position on this matter.

I understand you have also made a Submission regarding this matter to be considered by the ACT Work Safety Council, and I will let you know if there are any developments in this regard.

Thank you for taking the time to write to me again on this important issue.

Yours sincerely

Rachel Stephen-Smith MLA

6 SEP 2018

### ACT Legislative Assembly

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