

[REDACTED]

Dear [REDACTED]

I refer to your request received by the Directorate on 26 October 2016 and clarified on 27 October 2016 in which you are seeking access under the ACT *Freedom of Information Act 1989* (the FOI Act) to

'documents – including briefings to the Head of the Directorate and Minister for Education – regarding fraud or suspected fraud in relation to Family Day Care for the period 1 January 2015 to 26 October 2016'.

My decision

I am authorised under section 22 of the FOI Act to make a decision on behalf of the Directorate in relation to your request.

A schedule setting out the documents in relation to your request and my decisions in relation to their release is at Attachment A. The released documents are at Attachment B.

You will see from the schedule that I have decided to release one document in full, twelve documents partially and to exempt thirty five documents from release, under exemption provisions in the FOI Act, including sections 34, 35, 36, 37, 41 and 45. Details of the exemption provisions, together with my reasons for applying them are set out below.

Section 34 – documents affecting relations with Commonwealth and States

Section 34 states:

(1) *Subject to subsection (2), a document is an exempt document if disclosure of the document under this Act—*

(a) would, or could reasonably be expected to, cause damage to relations between the Territory and the Commonwealth or the Territory and a State; or

(b) would divulge information or matter communicated in confidence by or on behalf of the Commonwealth, a State or an authority of the Commonwealth or of a State to the

Territory, to a Territory authority or to a person receiving the communication on behalf of the Territory or of a Territory authority.

(2) This section does not apply to a document in respect of matter in a document the disclosure of which under this Act would, on balance, be in the public interest.

The majority of the documents I have decided are exempt from release under this provision (and s 37) because disclosure of the documents could reasonably be expected to damage relations between the Territory and the Commonwealth and would also divulge information communicated in confidence.

Section 35 Executive documents

Section 35 states:

(1) A document is an exempt document if it is—

(a) a document that has been submitted to the Executive for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive; or

(b) an official record of the Executive; or

(c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or

(d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Executive, other than a document by which a decision of the Executive was officially published.

I have exempted two documents under this provision of the FOI Act as they are documents brought into existence for the purpose of consideration by the Executive.

Section 36 – Internal working Documents

Section 36 states:

(1) Subject to this section, a document is an exempt document if its disclosure under this Act—

(a) would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of,

the deliberative processes involved in the functions of an agency or Minister or of the Territory; and

(b) would be contrary to the public interest.

I have exempted one of the documents under this section of the FOI Act as it relates to the deliberations of officers and I consider it is not in the public interest to release it.

Section 37 Documents affecting enforcement of the law and protection of public safety

Section 37 states:

A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—

(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance; or

(b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or

(c) endanger the life or physical safety of any person.

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—

(a) prejudice the fair trial of a person or the impartial adjudication of a particular case; or

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or could reasonably be expected to, prejudice the effectiveness of those methods or procedures; or

(c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

(3) In subsections (1) and (2):

"law" means a law in force in Australia.

The majority of the documents I have decided are exempt from release under this provision (and s 34) because disclosure of the documents could reasonably be expected to prejudice the proper administration of the law in a particular instance.

Section 41 – Documents affecting personal privacy

Section 41 of the Act relates to documents affecting personal privacy. Section 41(1) states:

A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Information in the documents contains personal information about a number of individuals, whose identities are apparent, or can reasonably be ascertained, from the information in the document. In my view the disclosure of this personal information would be unreasonable as it could identify individuals, and in some cases, prejudice the protection of those individual's right to privacy.

Accordingly, I am satisfied that the personal information in these documents is exempt under section 41 of the FOI Act.

Section 45 – Documents containing material obtained in confidence

Section 45 concerns documents containing material obtained in confidence. This section states that a document is an exempt document if:

(1) A document is an exempt document if its disclosure under this Act constitutes a breach of confidence.

The information contained within the records of conversation was provided to the Directorate with an expectation of confidentiality. I consider that the release of this information would constitute a breach of that confidentiality.

I am satisfied that the information obtained in confidence is exempt under s 45 of the FOI Act.

Your rights for review

My decision not to release all the information relevant to your request is subject to review under section 59 of the FOI Act. It is also appealable if, in your opinion, you do not believe that all the documents relevant to your request in the possession of the Directorate have been located.



An information sheet outlining the review and appeal process provided for in the FOI Act is attached to this letter.

Yours sincerely

A handwritten signature in cursive script that reads "Tracy Stewart".

Tracy Stewart
Director
Governance and Community Liaison

12 January 2017

Freedom of Information Schedule

[REDACTED] – Family Day Care

Document Number	Description	Document Date	Decision (Full release, Partial release, Exempt)	Reason for Exemption
1	Brief to Minister regarding family day care legislative instrument.	21 January 2015	Partial release; out of scope	S 41
2	File Note: Meeting between a provider and Children's Education and Care Assurance (CECA)	21 January 2015	Exempt	S34, S37(1)(a)
3	Brief to Minister re: update Family Day Care (FDC)	30 January 2015	Partial release	S41, S34(1)(b), S37(1)(a)
4	Email from Children's Policy and Regulation Unit (CPRU) to Director Governance and Assurance regarding FDC	28 April 2015	Partial release	S34 S37(1)(a)
5	Brief to Minister re update on FDC provider	4 December 2015	Partial release	S37(1)(a) S34 S41
6	Inter-jurisdictional FDC Working Group minutes	16 February 2016	Exempt	S34
7	Letter from Australian Government to an FDC provider	17 March 2016	Exempt	S34 S37(1)(a)
8	ACT Civil and Administrative Tribunal transcript of proceedings	30 March 2016	Exempt	S34 S37(1)(a)
9	Moysey email to CECA regarding an FDC provider	12 May 2016	Exempt	S34 S37(1)(a)
10	Letter from Australian Government to an FDC provider requesting information	19 May 2016	Exempt	S34 S37(1)(a)

Freedom of Information Schedule

[REDACTED] – Family Day Care

Document Number	Description	Document Date	Decision (Full release, Partial release, Exempt)	Reason for Exemption
11	Email chain CECA and Australian Government	25 May 2016	Exempt	S34 S37(1)(a)
12	Ministers Weekly Brief	May 2016	Exempt	S34 S37(1)(a)
13	Australian Government letter to a FDC provider	23 June 2016	Exempt	S34 S37(1)(a)
14	Australian Government letter to a FDC provider	8 July 2016	Exempt	S34 S37(1)(a)
15	Ministers Weekly Brief	August 2016	Exempt; out of scope	S34
16	Witness Statement 1 re a FDC provider	11 August 2016	Exempt	S34 S37(1)(a)
17	Brief to Minister re National Family Day Care Issues	18-19 August 2016	Partial release	S34, S37(1)(a), 41
18	Brief to Deputy Director General regarding FDC	18 August 2016	Partial release	S34 S37(1)(a)
19	Corporate Executive overview	August 2016	Partial release; Out of scope	S34
20	Witness Statement 2 re a FDC provider	22 August 2016	Exempt	S34 S37(1)(a)
21	Corporate Executive overview	August 2016	Partial release	Out of scope

Freedom of Information Schedule

[REDACTED] – Family Day Care

Document Number	Description	Document Date	Decision (Full release, Partial release, Exempt)	Reason for Exemption
22	Conversation Record	30 August 2016	Exempt	S37(1)(a) S41 S45
23	Conversation Record	2 September 2016	Exempt	S37(1)(a) S41 S45
24	CECA email to Australian Government regarding a FDC provider	5 September 2016	Exempt	S34 S37(1)(a) S45
25	Minister's Weekly Brief	September 2016	Partial release	Out of scope
26	Australian Education Senior Officials Committee (AESOC) Brief	9 September 2016	Exempt	S34
27	Letter from Australian Government Minister for Education and Training to ACT Minister for Education	14 September 2016	Partial release	S34 S41
28	Education Council Brief	23 September 2016	Exempt	S34
29	Email regarding Family Day Care issues	4 October 2016	Exempt	S34 S37(1)(a)
30	Question Time Brief	19 October 2016	Exempt	S34 S37(1)(a)

Freedom of Information Schedule

– Family Day Care

Document Number	Description	Document Date	Decision (Full release, Partial release, Exempt)	Reason for Exemption
31	CECA letter to a FDC provider	20 October 2016	Exempt	S34 S37(1)(a)
32	Email from CECA to the Australian Government, regarding a FDC provider	24 October 2016	Exempt	S34 S37(1)(a) S41
33	Email	17 October 2016	Exempt	S37(1)(a) S41
34	Email King to Moysey/Brighton	5 October 2016 5.50PM	Exempt	S34 S37(1)(a)
35	Email Brighton to Williams	5 October 2016 4.36PM	Exempt	S36
36	Email	5 October 2016 5.54AM	Exempt	S34 S37(1)(a)
37	Email chain	4 October 2016 7.20PM	Exempt	S34 S37(1)(a)
38	Email chain	4 October 2016 7.17PM	Exempt	S34 S37(1)(a)
39	Email chain	4 October 2016 6.58PM	Exempt	S34
40	Email chain	13 August 2016 2.36 PM	Partial release	Out of scope

Freedom of Information Schedule

[REDACTED] – Family Day Care

Document Number	Description	Document Date	Decision (Full release, Partial release, Exempt)	Reason for Exemption
41	Email	7 June 2016 4.01PM	Partial release	Out of scope
42	Summerrell email CECA functions	13 October 2016 4.42PM	Exempt	S34 S35
43	Moysey email re NSW FDC	15 August 2016 11.15AM	Full release	
44	Cabinet in Confidence CECA brief and talking points	October 2016	Exempt	S34 S35
45	AESOC Brief –FDC compliance [item 4.01]	7 September 2016	Exempt	S34
46	Education Council brief – FDC [item 3.04]	23 September 2016	Exempt	S34
47	Email- Early Childhood Policy Group, out of session paper- FDC Independent Review	5 September 2016	Exempt	S34
48	Education Council Paper- item 3.04- Family Day Care	23 September 2016	Exempt	S34



ACT
Government
Education and Training



BRIEF

TRIM No: MIN15/30

SUBJECT: FAMILY DAY CARE SERVICES LEGISLATIVE INSTRUMENT LEY MP

To: Minister for Education and Training

From: Deputy Director-General, Education and Training Directorate

Director: Joanne Garrisson
Branch: Governance and Assurance

Recommendation

That you:

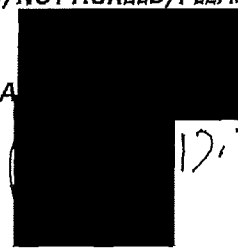
- note the information in the brief about changes to the Family Assistance Law affecting family day care providers.

NOTED/PLEASE DISCUSS

- sign the attached letter to Minister Morrison.

AGREED/NOT AGREED/PLEASE DISCUSS

Joy Burch MLA



12.3.15

Action Officer: Susan Sullivan
Branch: Governance and Assurance
Extension: 71093

Critical date and reason

The Hon Sussan Ley MP, then Assistant Minister for Education, wrote to all state and territory education ministers on 9 December 2014 to advise them of changes to legislation for new requirements for approved Family Day Care (FDC) services and ask them for their cooperation to support the changes.

On Friday 30 January 2015, the Hon Scott Morrison MP, Minister for Social Services, issued a media release outlining that he has revoked and reissued the legislative Instrument which had previously introduced four new rules applicable to Family Day Care (FDC) services Initial and ongoing approval under family assistance law.

Purpose

To inform you of the changes to legislation for new requirements for approved FDC services, tabled in the Parliament on 4 December 2014, as background for your response to Minister Ley's letter. The response will be addressed to the Hon Scott Morrison MP who is now responsible for education and care.

Background

On 21 December 2014, a new Australian Government Department of Education and Training was announced, and the portfolio containing child care policies and programs was moved from the former Department of Education to the Department of Social Services. The Hon Scott Morrison MP was appointed the Minister for Social Services on 23 December 2014.

The Department of Education's Serious Non-Compliance Taskforce (Taskforce) found evidence of significant childcare payment fraud, with FDC services comprising more than 90 per cent of offenders.

In order to address some of the Taskforce's findings, four changes were made to a legislative instrument under the family assistance law. They were contained in the Child Care Benefit (Eligibility for Approval and Continued Approval) Amendment Determination 2014 (No.1) Amending Determination. The changes, two of which have already come into effect, would affect FDC services in the ACT, the educators who work for them, and anyone applying for FDC service approval.

On 30 January 2015 Minister Morrison reissued a new legislative instrument which included three of the four rules, excluding the rule that prevented FDC educators from obtaining care from other FDC educators on days that they were working (the 'child swapping' rule).

Issues

The Eligibility Determination sets out changes to the criteria and obligations for child care services to become and/or remain approved to administer Child Care Benefit (CCB) on behalf of families. The changes are aimed at improving compliance with CCB regulations and are therefore outside the control of state and territory jurisdictions. A fact sheet outlining the amendments to the legislation and their rationale is at [Attachment A](#).

A summary of the changes and any implications for the ACT Government's Regulatory Authority is as follows:

1. Approved FDC services can only operate in the state/territory in which they have approval under the Education and Care Services National Law and must apply for service approval in each jurisdiction in which they want to operate. This change will come into effect on 3 June 2015; however, the CPRU has already received application from two external providers operating in the ACT, and it is likely that there will be more.

2. From 3 December 2014, FDC services must comply with any conditions on the service's approval imposed by a state/territory Regulatory Authority in addition to those under the family assistance law. The CPRU has imposed some FDC service approval conditions, such as a prescribed coordinator to educator ratio of 1:15.
3. From 3 December or as soon as the relevant software function becomes available to them, FDC services must submit the Service Provider Personnel ID for the relevant carer who provided the sessions of care together with their reports of sessions of care to the department (now the Department of Social Services). This will help the department in ensuring that the sessions of care are attributed accurately to individual educators.

Consultation

NIL

Financial

Not yet clear.

Media

National family day care issues have been reported in the media over the past few months.



Stephen Gnlel
Deputy Director-General
4. March 2015

Document 2 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989



ACT
Government
Education and Training

BRIEF

Ref:

SUBJECT: ACT Family Day Care

To: Minister for Education and Training

From: Deputy Director-General, Education and Training Directorate

Director: Joanne Garrisson
Branch: Governance and Assurance

Recommendation

That you note the information in the brief,

Joy Burch MLA



4/2/15

NOTED/PLEASE DISCUSS

*an update when
compliance reviews
Completed*

Action Officer: Susan Sullivan
Branch: Governance and Assurance
Extension: 71093

Critical date and reason

You were previously briefed via the 28 October 2014 Minister's Weekly Brief about the Australian Government Department of Education (DoE) Family Day Care Serious Non-Compliance Taskforce.

Purpose

To inform you of the issues in some FDC services nationally and to advise on the status of FDC services in the ACT.

Background

The DoE have established a Serious Non-Compliance Taskforce (Taskforce) in response to a large number of suspicious claims for a range of childcare benefits and mounting evidence of childcare payment fraud. There are particular problems in Victoria where millions of dollars are alleged to have been fraudulently acquired by family day care providers.

During the NP NQA Review process issues have also been raised by jurisdictions, particularly, NSW, Victoria and Queensland, about the family day care sector. All jurisdictions have reported huge growth since 2012 and also a rise in the number of complaints and non compliance in the sector.

A national family day care working group has been established, which includes representatives from DoE and from all state and territory regulatory authorities to discuss the issues. You were briefed via the 21 October 2014 Minister's Weekly Brief about this group. One of the main concerns of this group is the safety and well being of children that may be attending these services.

Issues






Consultation
Department of Education.

Financial
Nil.

Media
National family day care issues have been reported in the media over the past few months.



 Leanne Cover
Deputy Director-General
30 January 2015

McDuff, Wendy

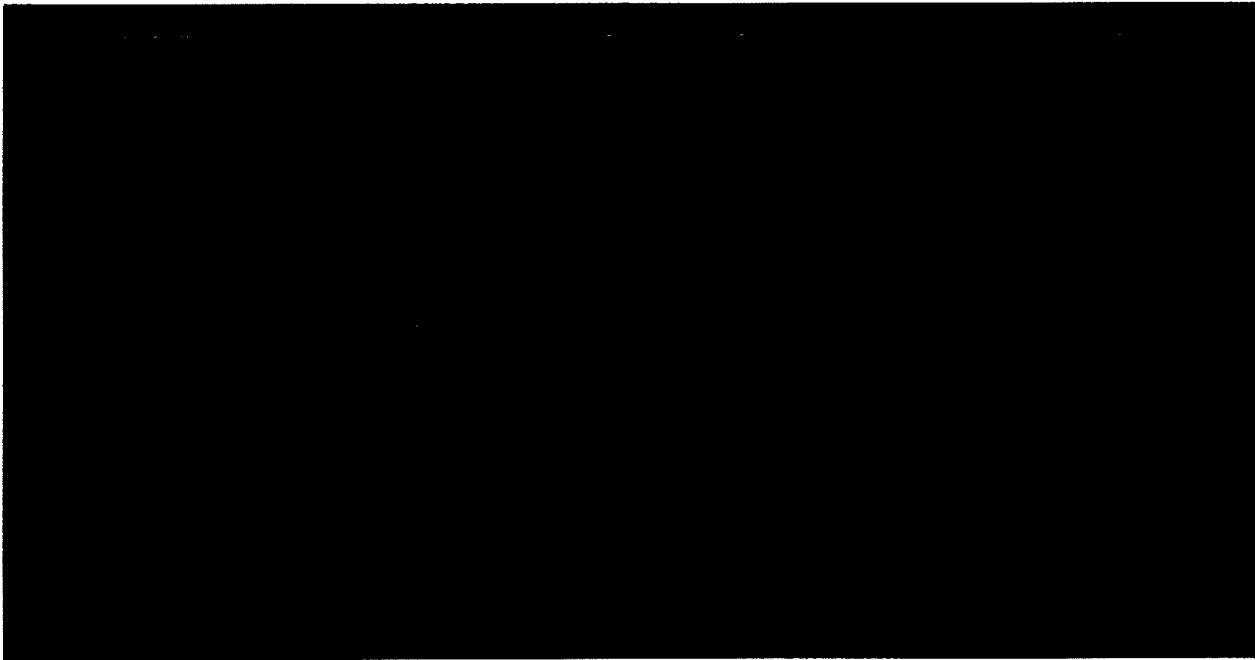
From: Gale, Vanessa
Sent: Tuesday, 28 April 2015 2:04 PM
To: Cuzner, Jane
Cc: [REDACTED]
Subject: [REDACTED]

Hi Jane,

Information below regarding FDC issue. Apologies it is a lot of information – but the context is quite complicated.

Background

- Determining responsibility for monitoring family day care services who have educators across jurisdictions was identified early in the implementation of the National Quality Framework (NQF) as an issue.
- ACECQA worked through a cross jurisdictional working group in 2014 to establish a protocol for regulation of Family Day Care services operating across jurisdictions while options to resolve issues were considered.
- Amendments have been made to the Family Assistance legislation administered by the Australian Government that will require all Family Day Care providers to hold a service approval in each jurisdiction where the provider has educators. The amendments will take effect from July 2015.
- Legislative amendments are also being progressed by the Early Childhood Policy Group (ECPG) as part of the 2014 Review of the NQF that will compliment the changes made to Family Assistance Law.



With Thanks

Vanessa Gale | Senior Policy Officer |
Phone 02 6207 1104 | Fax 02 6207 1128 |
Children's Policy and Regulation Unit | Education and Training Directorate | ACT Government
Headley Beare Centre for Teaching and Learning, Stirling 2611
PO Box 158, Canberra City 2601 | www.act.gov.au





ACT
Government
Education and Training



BRIEF

Trim No: MIN15/1238

SUBJECT: [REDACTED]

To: Minister for Education and Training

From: Deputy Director-General

Director: Jane Cuzner
Branch: Governance and Assurance

Recommendation

That you note the information in the brief in response to questions you raised in MIN15/1133 about fitness and propriety under the National Law and about the Australian Government response to fraudulent CCB claims.

Joy Burch MLA [REDACTED]

15/12/15

NOTED/PLEASE DISCUSS

update after ACAT

Action Officer: Susan Sullivan
Branch: Governance and Assurance
Extension: 71093

Critical date and reason

[REDACTED]

Purpose

To provide you with further information in response to questions you raised in MIN15/1133. MIN15/1133 is at Attachment B.

Background

[REDACTED]

Issues



Fitness and propriety under the Education and Care Services National Law (National Law).

You have asked if child swapping equates to not being fit and proper for the purposes of the National Law.

Evidence of child swapping would be relevant to whether a provider was fit and proper if the evidence informed a breach of the national law. A conviction or regulatory action under the Family Assistance Law involving child swapping would also be a relevant consideration as to whether a provider was fit and proper.

Section 12 of the National Law provides that an applicant for provider approval (individual or person with management or control) must satisfy the Regulatory Authority that they are a fit and proper person. In order to make application for a service approval under the National Law the applicant must first hold a provider approval.

In determining whether a person is fit and proper for the purpose of provider approval the Regulatory Authority must have regard to the matters outlined in Sections 13 of the National Law.

These matters include: history of compliance with the National Law; compliance with other relevant children's services or education related law; criminal history related to Working With Vulnerable People checks; the financial solvency of the person; the medical capacity of the person; and the financial circumstances of the person.

The Regulatory Authority has a discretion in section 13(3) to consider other circumstances where a person may be considered not to be fit and proper.

In regard to the person's history of compliance under the Children and Young People Act 2008, Education and Care Services National Law (ACT) Act 2011, or Education Act 2004, the Regulatory Authority may consider:

- Non-compliance identified through routine monitoring or investigation of complaints or serious incidents; and
- The applicant's apparent willingness and capacity to comply.

For the purpose of carrying out an assessment as to whether a person is a fit and proper person, section 14 of the National Law allows the Regulatory Authority to ask an applicant for further information. This might include asking the applicant to provide:

- Details of referees who can be contacted by the Regulatory Authority;
- Clearance certificate or letter from a medical practitioner;
- Financial statements; and/or
- Any other evidence requested by the Regulatory Authority to demonstrate the applicant's fitness and propriety.

For the purpose of carrying out an assessment as to whether a person is a fit and proper person section 14 of the National Law allows the Regulatory Authority to undertake enquiries in relation to the person. This might involve consultation with agencies including the Australian Government, Care and Protection Services, the Australian Federal Police and the Regulatory Authorities of other jurisdictions, or with the employer and/or previous employers of the person.

Australian Government Investigation into "child swapping"

The Australian Government has made changes to its Family Assistance Law affecting Child Care Benefit (CCB) approved family day care services. The changes were implemented on 12 October 2015 and are intended to end 'child swapping' in the family day care sector.

Child swapping is a practice where a family day care educator, or their partner, receives child care payments for a session of family day care provided to their child on the same day that they themselves provide family day care.

The new integrity measure is a step in the Government's strategy to address serious non-compliance and sharp practice within the family day care sector.

In addition the Australian Government has set up the Child Care Payments Compliance Branch to create an intelligence network seeking out non-compliant services through a combination of targeted investigations into suspicious claims, random checks, forensic data analysis and better education.

The Child Care Payments Compliance Branch includes three teams:

- Serious Non-compliance Task Force is a team of compliance case managers from across its National and State Networks that are working together to conduct a concerted compliance effort on services at high risk of serious non-compliance.

- Compliance Strategy, and Intelligence Team is focussing on forensic data interrogation and analysis, business intelligence, stakeholder and risk management to increase proactive identification of suspicious claims and support major operations with evidence and intelligence; and
- Compliance Operations Team is focussed on reducing systemic non-compliance issues across the child care sector through deterrence measures such as active random checks and greater education around the rules.

CECA frequently liaises with the Child Care Payments Compliance Branch to ensure sharing of relevant information.

A copy of the letter is at

Attachment C.

Consultation

Australian Government's Department of Social Services.

Financial implications

Nil.

Media

There has been ongoing media about the changes to CCB legislation and about fraudulent practices around claiming CCB.

Stephen Griel
Deputy Director-General
December 2015

Document 6 is exempt under
Section 34 of the
Freedom of Information Act 1989

Document 7 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989

Document 8 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989

Document 9 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989

Document 10 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989

Document 11 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989

Document 12 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989

Document 13 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989

Document 14 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989

Document 15 is exempt under
Section 34 of the
Freedom of Information Act 1989

Part of Document 15 is out-of-scope

Document 16 is exempt under
Section 34 and 37(1)(a) of the
Freedom of Information Act 1989

SENSITIVE

To:	Minister for Education	TRIM No.1 MIN16/686
		Date Rec'd Minister's Office .../.../...
From:	Deputy Director-General	
Subject:	National Family Day Care Issues - Update	
Critical Date:	<i>No critical date</i>	
Critical Reason:	<i>For Information</i>	

[REDACTED]
 Meg Brighton
 Deputy Director-General
 19 August 2016

Purpose

To provide an update on the concerns in relation to Family Day Care (FDC) arising from the Early Childhood Policy Group (ECPG) meeting held on 27 July 2016 and the Inter-jurisdictional FDC Working Group held on 2 August 2016.

Background

Family Day Care regulation continues to dominate national conversations between State and Commonwealth jurisdictions. Presently two national working groups exist to work on strategic resolutions to counter fraud and other breaches arising from a growing number of FDC providers.

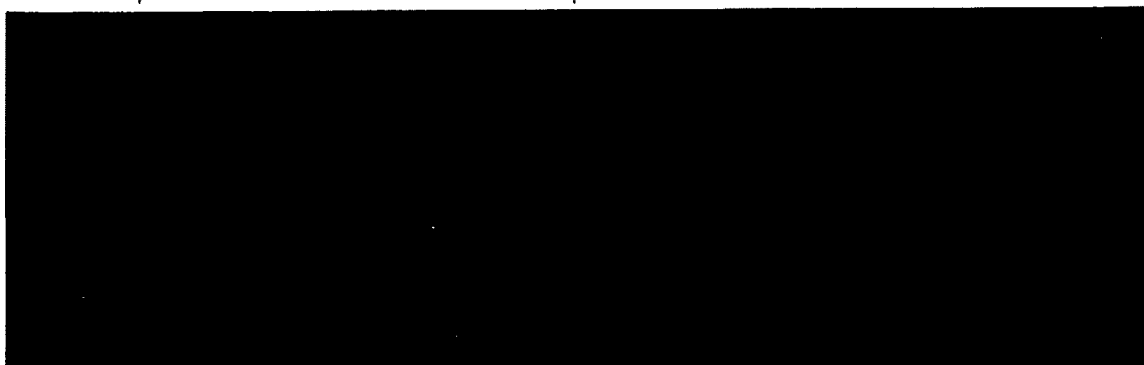
The *Education and Care Services National Law (ACT) Act 2011* (the *National Law*) is designed to ensure the safety, health and wellbeing of children attending education and care services. For FDC providers the National Law requires thorough documentation to identify educators, the locations where children are educated, and accurate registers of children being provided care.

The Commonwealth's *Family Assistance Law (FAL)* is designed to provide financial support to families by subsidising childcare. In the FDC context, the transaction for parental support for FDC fees are able to be made through the FDC provider.

Through Early Childhood Policy Group (ECPG), jurisdictions have been reporting that there is a cohort of FDC providers allegedly engaging in fraudulent conduct under Commonwealth law, and false and misleading conduct under the National Law to obtain unlawful payments under FAL.

Non-compliance arises under the *National Law* because these providers fail to keep full records that would enable the Regulator to determine if the provider is compliant. For example, records demonstrating if an educator is legitimately qualified, providing a service or whether children listed are receiving a service.

In response to this ongoing issue, two national working groups were formed. One working group operates under the (ECPG) and the second was initiated by the Commonwealth. The ECPG is made up of key regulatory and policy officers from States, Territories, and the Commonwealth and includes representation from ACECQA. ECPG reports to AESOC.



Other State and Territories report similar compliance issues with FDC. Currently FDC services makes up approximately 7% of all approved services nationally, yet comprise 43% of all confirmed national breaches against services approved since July 2013.

ECPG FDC Regulatory Model Working group

The FDC regulatory model working group was established in December 2015 to determine whether the current model for family day care under the *National Law* was fit for purpose and to provide advice on options for addressing risks and ensuring the health, safety and wellbeing of children.

The group held a workshop in Perth on 8 March 2016. Some of the key ideas discussed included:

- Operation of FDC Services across jurisdictions to ensure providers are registered in each jurisdiction and hold a principal office. Regulatory Authorities must also be advised of any change of address prior to moving of a principal office;
- Limiting number of FDC educator's services can engage and placing as a condition on a service approval;
- Setting ratios between the numbers of co-ordinators to educators;
- Improving powers of entry to an FDC premises when an Authorised Officer reasonably believes that a service is operating or the FDC register indicates the service should be operating at the time of entry;
- Required qualifications for FDC educators. This would require educators to hold an approved Cert. III or equivalent rather than working towards the qualification; and
- Creating an offence for failing to keep required registers of educators.

The workshop also considered and discussed the following issues:

- 77% of approved providers are Private or Profit Operators. This is an 18% increase in FDC providers nationally between January and March 2016.
- There is limited understanding of the role and responsibilities of newer Approved Providers and Co-ordinators.

- The withdrawal or reduction of local government or not-for-profit providers in some States.
- There are now more long day care providers who exist in multiple jurisdictions who have less oversight of the staff who work from home looking after children.
- Poor quality training organisations are in the market, resulting in a dilution of skills.
- Evidence that some services attempt to bypass caps placed by Regulatory Authorities on the limit of educators by using different provider names.
- Evidence that some providers use a "cheat sheet" on what to tell Regulatory Authorities at interviews for provider approval.
- The National Law has a generic approval process for centre based service and FDC, yet FDC poses a higher risk than centre based services.

Inter-jurisdictional Family Day Care Working Group,

This group first met in October 2014. It brings Commonwealth and State Regulatory Authorities (SRAs) together to share intelligence, discuss concerns and develop collaborative actions to deal with the growth in FDC operators. Their mandate is to provide expert advice in developing practical and collaborative measures to strengthen all levels of governments' capacity to take appropriate compliance action in the FDC sector. The main conduct discussed is fraud.

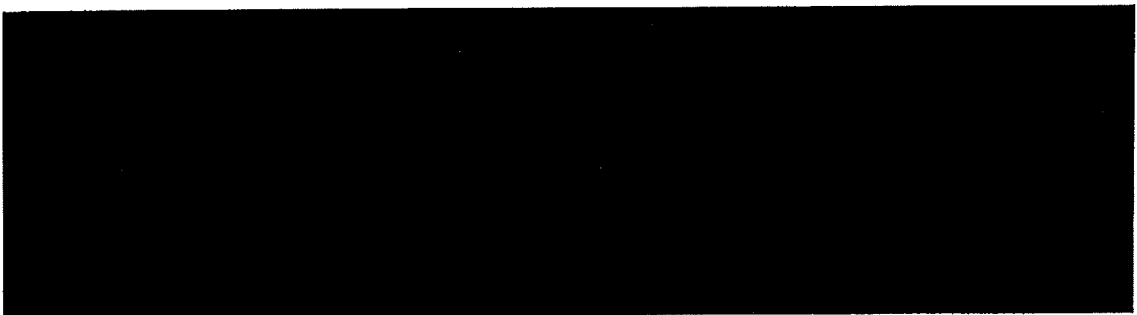


Government Commitment –

Nil

Issues

At the ECPG meeting of 27 July 2016, NSW and Victoria strongly advocated that Education Council (EC) should be briefed on the problem with FDC with a view to taking decisive action. However, as many of the issues pertain to the Commonwealth's FAL for which the EC do not have jurisdictional governance any considerations regarding FAL would need to be provided as recommendations to the Australian Government.





Financial Implications

Currently, there is a cohort of FDC providers who have learnt how to exploit Commonwealth payments through the vehicle of FDC. While not to the extremes of NSW, Victoria, QLD or WA, the resources being used to deal with FDC in the ACT is disproportionate when compared to the sector overall.

Consultation

Nil.

Benefits/Sensitivities

Managing the national issue and its local implications engages sensitivities of protecting children, preventing fraud of tax-payers money and maintaining confidence in regulatory laws and systems.

Media Implications

The levels of fraud estimated nationally is considerable. Currently, overarching media coverage on the issue is developing. Should the new story develop a local angle, speaking points and other supporting material will be prepared for your convenience.

Recommendations

That you:

Note the Information contained in this brief.

Noted / Please Discuss

Shane Rattenbury MLA..... /...../.....

Minister's Comments

Director: Sean Moysey

Phone:72143

Title: Director

Date: 16 August 2016

Action Officer: Jane MacCulloch

Phone:76249



File Ref: /
Trfm No: DET16/1563

Deputy Director-General

BACKGROUND BRIEF ON FAMILY DAY CARE SERVICES IN THE ACT

Recommendation

That you note the information contained in this brief.

NOTED/PLEASE DISCUSS

Meg Brighton

Director's Name: Sean Moysey

//

Phone: 72143

Background

This paper provides an update and background information on Family Day Care (FDC) in the ACT. The paper is divided into three areas:

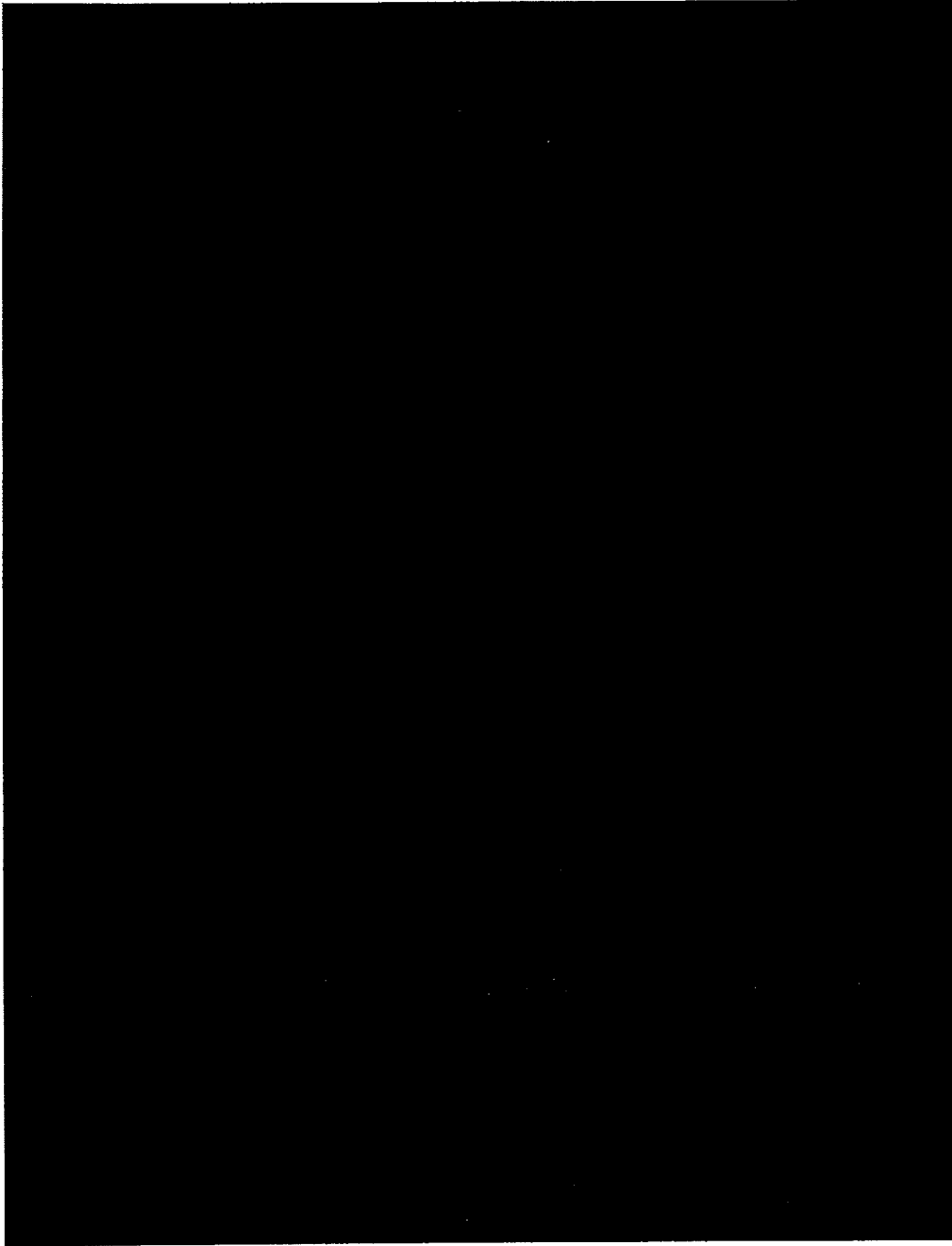
- Update on the ECPG – Children's Safety, Health and Wellbeing Sub-Group meeting held on 15 August 2016. The Policy officer for Children's Education and Care Assurance (CECA) attended this meeting.
- Processes and arrangements for sharing information and evidence with other jurisdictions including the Commonwealth.
- Outline FDC compliance and approval matters currently being addressed.

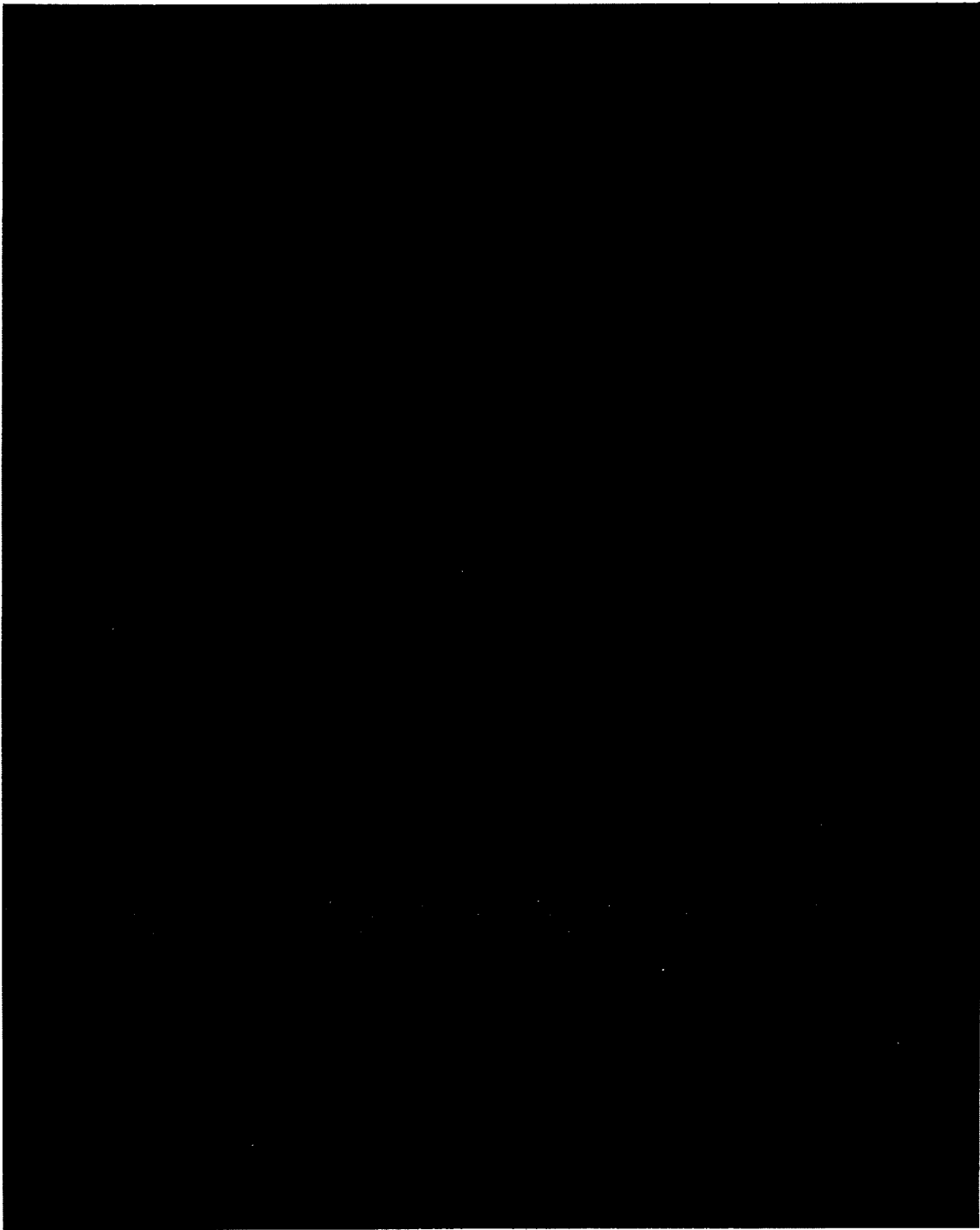
Children's Education and Care Assurance assess and regulate the compliance of approved Family Day Care services, and approved providers, under the *Education and Care Services National Law and Education (ACT) Act 2011* and the *Education and Care Services National Regulations 2011* (the *National Law*).

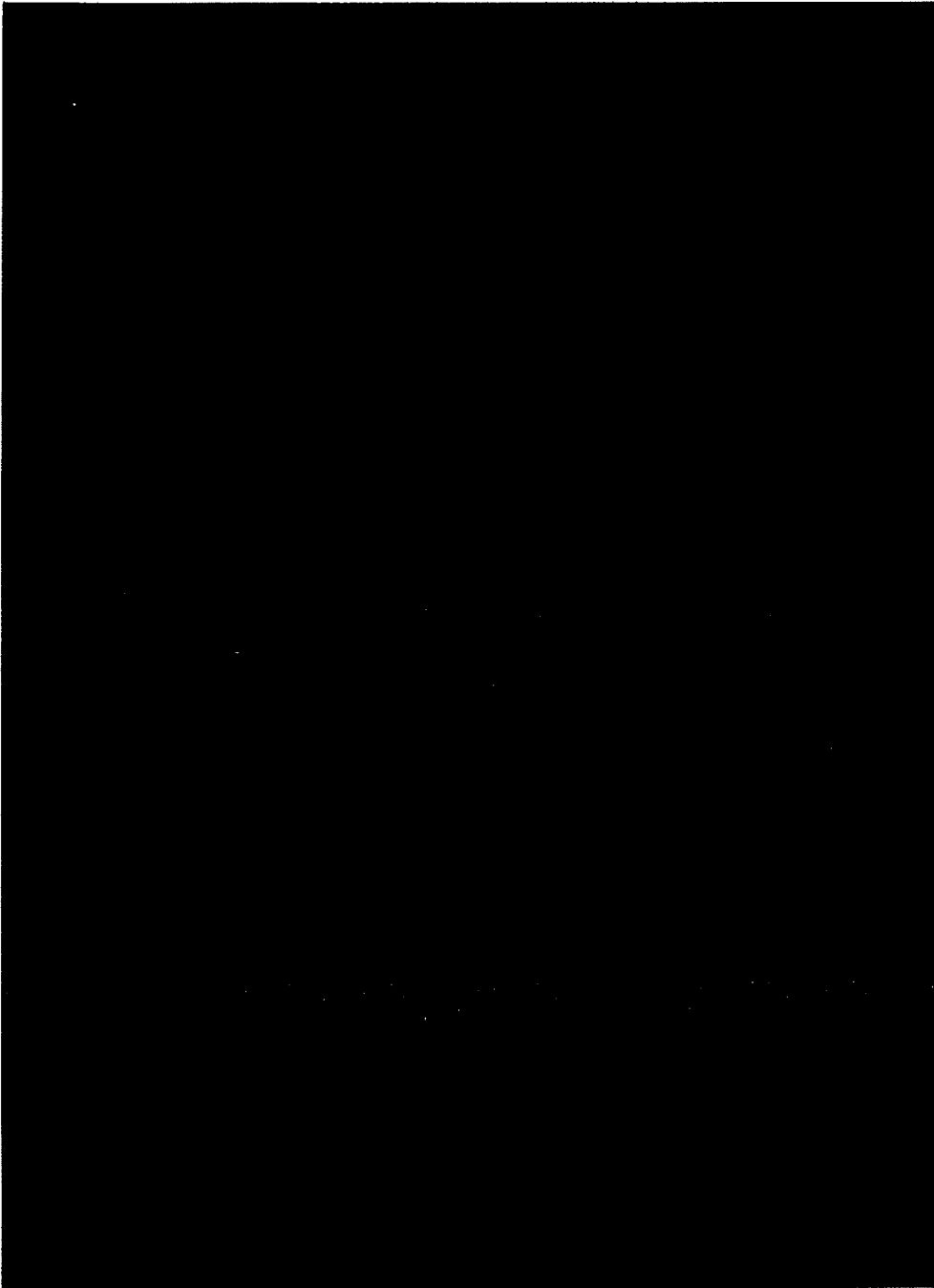
Issues













Consultation with Strategic Finance and Funding Implications
Nil

Consultations
Nil.

Media
Nil

Sean Moysey
Director
Regulation and Compliance
18 August 2016

CORPEX OVERVIEW

Relates to activity in the week of




CORPEX IN CONFIDENCE

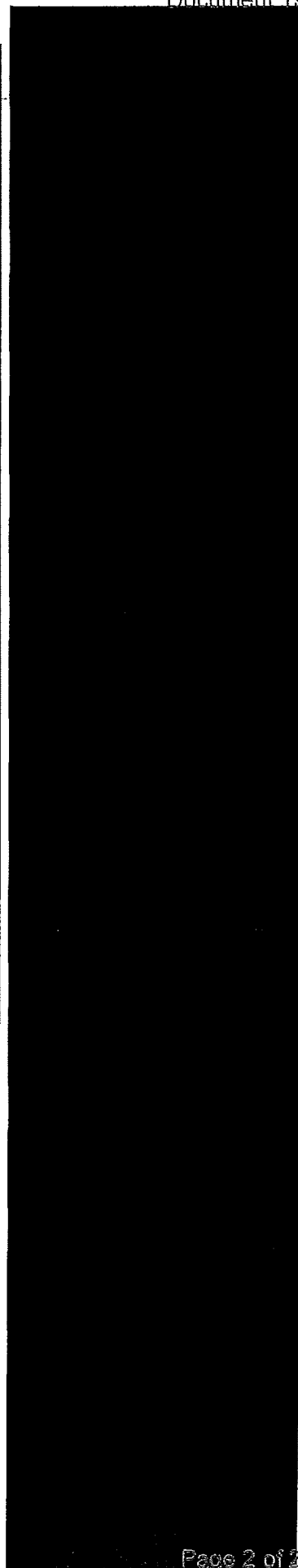
	ITEM	DETAIL
OFFICE FOR SCHOOLS REGULATION AND COMPLIANCE	<p>2 August 2016 -- Inter-jurisdictional Family Day Care Working Group.</p>	<p>On 2 August CECA representatives attended an inter-jurisdictional working group with other State and Territory Regulatory Authorities, the Australian Government and other agencies (including representatives from the Department of Social Services; the Department of Human Services; the Australian Federal Police and Australian Skills Quality Authority). The meeting concentrated on significant compliance concerns in relation to Family Day Care services across Australia, with a predominate focus on Child Care Benefit (CCB) fraud under the Australian Government <i>Family Assistance Law</i>.</p>

CORPEX OVERVIEW

Relates to activity in the week of

CORPEX IN CONFIDENCE

	ITEM	DETAIL
		



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CORPEX OVERVIEW

Relates to activity in the week of

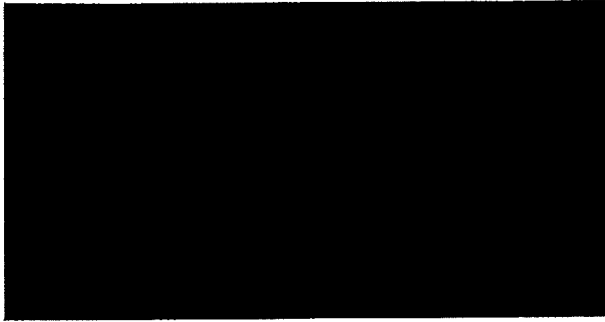
CORPEX IN CONFIDENCE

	ITEM	DETAIL
REGULATION AND COMPLIANCE	15 August 2016 – Special ECPG FDC meeting.	A special ECPG family day care subgroup meeting was convened in Melbourne to consolidate strategies and plans to manage the extent of unlawful conduct by particular FDCs.

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Section 37(1)(a), Section 41 and Section 45 of the
Freedom of Information Act 1989

Document 23 is exempt under
Section 37(1)(a), Section 41 and Section 45 of the
Freedom of Information Act 1989

Document 24 is exempt under
Section 34, Section 37(1)(a) and Section 41 of the
Freedom of Information Act 1989



MINISTER'S WEEKLY BRIEF

Changes to Family Assistance Law.

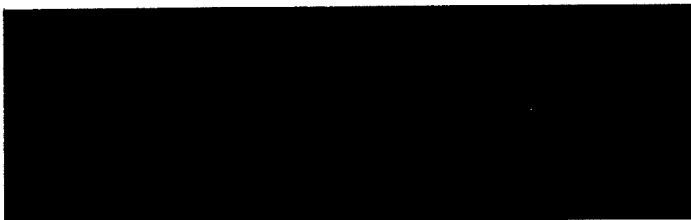
On 8 September 2015 Minister, Scott Morrison announced new rules to eliminate the widespread abuse of payments through 'child swapping' in the family day care sector.

The Australian Government has made changes to family assistance law affecting Child Care Benefit approved Family Day Care (FDC) services. The changes will apply from 12 October 2015 and are intended to end 'child swapping' in FDC.

Child swapping is a practice where a family day care educator, or their partner, receives child care payments for a session of family day care provided to their own child on the same day that they themselves provide family day care.

The practice of child swapping is contrary to the original intent of family day care and, in the majority of cases, is solely designed to maximise profits for the service operator. The child swapping integrity measure seeks to strike a balance between the need to address child swapping practices while safeguarding legitimate family day care operators and the families who depend on them.

Attached are a Fact Sheet and FAQs.



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Senator the Hon Simon Birmingham

Minister for Education and Training
Senator for South Australia

Mr Shane Rattenbury MLA
Minister for Education
GPO Box 1020
Canberra ACT 2601

Dear Minister

Shane,

I write regarding ongoing concerns about the quality of child care services, particularly Family Day Care, and the integrity of Commonwealth funding for child care subsidies, following the recent Australian Federal Police (AFP) and the Australian Department of Education and Training action against five Family Day Care operators in Western Sydney.

As you are aware, the responsibility for assessing, approving and monitoring the quality of child care services rests with the states and territories. Child care services' access to child care subsidies, which they administer on behalf of families, is contingent on initial approval by state and territory regulators. As I emphasised in my letter earlier this year, there are strong community expectations that assessments under the National Quality Framework will be undertaken in a timely manner.

I am keen for us to work collaboratively so that we can achieve better outcomes for Australian children and their families, including children who attend family day care. The recent events in New South Wales raise very serious concerns about the potential risks to children's health and safety and it is imperative that we cooperate to protect them by removing non-compliant operators from the sector.

The Australian Government's focus on non-compliance (mainly but not solely focussed on Family Day Care) is showing clear results. Our action has resulted in a significant reduction of fraud in the child care system by around \$421 million in the last financial year. Between 1 July 2015 and 19 August 2016, the Department of Education and Training imposed sanctions and penalties on 109 services, including suspending and cancelling 65 services' approval to access child care subsidies.

The *Jobs for Families* Child Care Package, and its associated IT system, will make child care fee assistance far less attractive to operators who seek to enter the sector in order to exploit family entitlements.

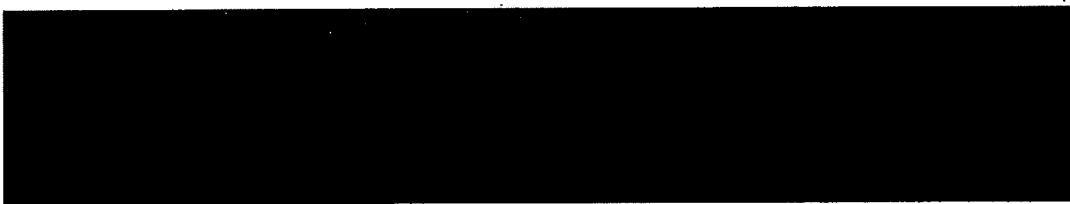
This Package was re-introduced into Parliament on Wednesday 1 September 2016. In addition, I have instructed my Department to bring forward additional regulatory changes to strengthen the Commonwealth's ability to assess current and prospective child care services (including their key personnel), to protect the integrity of the system. I urge you, and your counterparts at Education Council, to also examine ways to tighten your approval processes.

The Australian Government takes a strategic approach to its compliance responsibilities based on identified risk. At the meeting of the Early Childhood Policy Group on Monday 15 August 2016, jurisdictions supported my officials' offer to share data on the highest risk Family Day Care services in each jurisdiction with individual states and territories. It is proposed that the data would be supplemented with services of concern identified by a state regulator which may not have come to my Department's attention, and to then take coordinated action under both the National Law and the Family Assistance Law.

My Department has since provided data to your officials on ACT Family Day Care services at the highest risk of non-compliance. My Department is also happy to provide any other data necessary to enable jurisdictions to take action under the National Law.

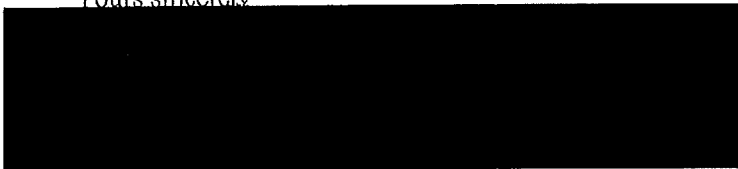
A high priority for joined up compliance action should include services understood to be breaching requirements relating to working with children checks and educator limits, which is a responsibility under state legislation. I am sure you would agree that this is one of the most critical measures for protecting children's health, safety and wellbeing. I would welcome your Department's constructive engagement in this process to address these concerns, which are of great importance to both of us.

I also trust that all jurisdictions will support the timely finalisation of the Review of the National Quality Agenda, so that the identified improvements to child care regulation can be implemented for the benefit of families and the sector as soon as possible.



I look forward to working collaboratively and quickly to address these concerns across the country.

Yours sincerely



Simon Birmingham

cc: The Hon Chris Bourke MLA

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Freedom of Information Act 1989

McGarvey, Caitlin

From: O'Daly, Edward
Sent: Saturday, 13 August 2016 2:36 PM
To: Brighton, Meg
Cc: Peffer, Dave; Summerrell, Jessica
Subject: Re: Family Day Care arrests in NSW [SEC=UNCLASSIFIED]



From: Brighton, Meg
Sent: Saturday, 13 August 2016 1:53 PM
To: Peffer, Dave; O'Daly, Edward
Subject: FW: Family Day Care arrests in NSW [SEC=UNCLASSIFIED]

Dear Dave & Ed

Further to Dave's text message to me. Attached are our summary dots on the NSW family day care matter. The Education Directorate's Children's Education and Care Assurance team regulates Family Day care. The regulation of family day care nationally is challenging and it is a matter of much

discussion between the jurisdictions and with the Commonwealth. The NSW case is the largest of its kind but there are several investigations underway nationally regarding possible fraud in family day care. We have various family day care investigations running at the moment but none of them have the same sort of issues as NSW has found.

Regards
Meg

Meg Brighton | Deputy Director-General **Education Directorate** | ACT Government
T: +61 2 62059458 | F: +61 2 6205 9418 | [REDACTED] | E: meg.brighton@act.gov.au
Level 6, 220 Northbourne Ave Braddon | GPO Box 158 Canberra ACT 2601 | www.det.act.gov.au

From: Moysey, Sean
Sent: Friday, 12 August 2016 4:02 PM
To: Brighton, Meg <Meg.Brighton@act.gov.au>; Summerrell, Jessica <Jessica.Summerrell@act.gov.au>
Subject: Family Day Care arrests in NSW [SEC=UNCLASSIFIED]

Dear Meg, Jess

Please accept the attached points in relation to an Australian Federal Police operation in NSW that is breaking today.

Regards
Sean

Sean Moysey
Director, Regulation and Compliance | Education | ACT Government
P 02 6207 2143 [REDACTED]

Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive Stirling 2611 |
GPO Box 158 Canberra ACT 2601
www.det.act.gov.au

McGarvey, Caitlin

From: Brighton, Meg
Sent: Tuesday, 7 June 2016 4:01 PM
To: Brighton, Meg; McGarvey, Caitlin
Subject: FNOTE_CECA catch up 7 June 2016

Sean Moysey Routine

Family Day Care:

- Current regulatory matters around identity – family day care providers perhaps using multiple identities. Family day care providers not able to verify identify (refusing to provide to CECA). Working closely with the Commonwealth



Meg Brighton | Deputy Director-General Education Directorate | ACT Government
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Freedom of Information Act 1989

Brennan, Sheelagh

From: Summerrell, Jessica
Sent: Monday, 15 August 2016 11:15 AM
To: Williams, Gareth
Subject: FW: Family Day Care arrests in NSW [SEC=UNCLASSIFIED]
Attachments: NSW FDC Counter Terrorism.dotx

FYI

Jessica Summerrell | Senior Manager | Email: Jessica.Summerrell@act.gov.au
Phone + 61 2 6205 0837 | [REDACTED]
Media and Communications | Education | ACT Government
220 Northbourne Avenue | GPO Box 158 Canberra ACT 2601
www.det.act.gov.au | [Facebook](#) | [Twitter](#) | [Pinterest](#) | [LinkedIn](#) | [Google+](#)

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To: Brighton, Meg; Summerrell, Jessica
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Regards
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Sean Moysey
Director, Regulation and Compliance | Education | ACT Government
P 02 6207 2143 [REDACTED]

Level 3, Hedley Beare Centre for Teaching and Learning, 51 Fremantle Drive Stirling 2611 |
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