Our Reference: PMD00072

5 January 2005

Ms Emma Blaikie
Family Day Care Association of Queensland
25-27 Tugulawa Street
BALMORAL QLD 4170

Dear Ms Blaikie

I am pleased to have had the opportunity to meet on 8 December 2004 clarify some of the issues contained in the Family Day Care e-petition tabled in Parliament on 11 November 2004.

As you are aware, the Queensland Government is committed to ensuring that formal child care services such as Family Day Care are provided in a way that protects children from harm and provides them with positive experiences. The Queensland child care legislation sets standards and regulates the provision of child care to protect and promote the best interests of children using child care in this state.

Your e-petition outlines a number of recommendations you have made to the House which you believe will "improve and clarify child care legislation" if they are implemented. I will address the issues you have raised in the order in which they appear in the e-petition.

As discussed at our recent meeting, I would appreciate you, as President of the Queensland Family Day Care Association, providing my response to the issues raised to all carers and schemes. I would be pleased to have this letter published in the January 2005 edition of your Association's newsletter.

Preparatory Year Students

As discussed at the meeting the decision by the Commonwealth Government to classify children attending the Queensland preparatory year trials as school children has impacted upon some families using Family Day Care and on the way some family day care providers conduct their business. For the purposes of implementing the Child Care Benefit (CCB) fee subsidy for parents, this has meant these children are eligible for subsidies up to 85 percent

of the fee for child care, not including the period of time when the child attends school or preparatory year trials. In contrast, the Commonwealth Government advised it will subsidise up to 100 percent of the fee for a child attending family day care and a sessional preschool, including the hours the child is attending the pre-school sessions.

The preparatory year is not defined in the *Education (General Provisions) Act 1989* as it will not be universally implemented until 2007. This legislation is currently under review and it is expected to be complete by 2006. The *Child Care Act 2002* will then need an amendment to reflect any changes to education legislation relating to the definition of school age.

Information on the number of families using family day care who have a child attending one of the 60 preparatory year trials and who are affected in this way is not known and, as we discussed, I would appreciate any quantitative information the association is able to provide on this. The department is conferring with Education Queensland about this matter to consider whether it is possible to make an early amendment of legislation. The Office of Child Care will ensure that you are informed about the possible changes.

Suitability notices for international students

The *Child Care Act 2002* section 97 requires each adult occupant of a home based care service to hold a current positive suitability notice issued by the Commission for Children and Young People and Child Guardian. The term "occupant" is defined in schedule 2 of the Act as being a person who:

> *(a) "resides in the home; or*
> *(b) is usually present in the home when the child care is provided."*

The *Child Care Act* 2002 and related legislation do not define "usually present" or "resides", so the ordinary meaning of these words apply. Accordingly, "usually present" ordinarily means where a person is normally, frequently or regularly present in the home, and "resides" ordinarily means to live permanently or for a considerable time in a place.

Although international students and visitors do not live permanently in the carer's home, they will require a suitability notice if they are usually present in the home when the child care is provided. Carers should ensure that visitors, including international students, are not usually present in the home when the child care is provided, pending the issue of a positive suitability notice for such persons.

The department will have further discussion with the Commission for Children and Young People and Child Guardian about this matter.

Fire and rescue powers of entry and Building Code requirements specific to Family Day Care homes

The Office of Child Care in the Department of Communities will contact the Department of Emergency Services to clarify the fire safety requirements for home based care.

Definition of "home"

Schedule 2 of the *Child Care Act* 2002 defines a "principal place of care" for a child receiving care from a licensed home based service as:

"the home at which the child is normally cared for in the course of the service."

Schedule 2 then proceeds to define "home" as:

"premises used as a private residence."

The common meaning of "private residence" is the home where a person lives.

These definitions exclude any other facility being used to provide licensed home based care. Care that is not provided in a home where the carer lives could be considered to be centre based care under the legislation. Care provided in the child's own home is not regulated under the Queensland legislative framework. It is the intent of the legislation that licensed home based care will only be provided at the carer's own home.

Section 103(b) of the *Child Care Regulation 2003* requires both the carer's residential address details and the carer's postal address to be recorded if they are not the same. This allows for situations where carers have a postal address which differs from their residential address, for example, in situations where mail is not delivered to the residence but to a post office box. This does not indicate that carers may use facilities other than their home to provide home based care.

As I advised at our meeting, the department is interested in exploring other service models to meet the needs of Queensland families. Any information the Association can provide on models that are licensed in other jurisdictions will be very welcome. In the interim, situations where family day care providers have more than one private residence used as a home will be assessed on a case by case basis.

Carers coming together

As you are aware, the department supports care providers coming together and recognises the value for both children and their care providers. Section 71(1) of the *Child Care Regulation 2003* sets sixteen as the maximum number of children able to be cared for in a group situation when carers meet together without a coordinator being present. This limit is designed to provide safeguards for children and to maintain the unique nature of family day care, as opposed to centre based services.

This issue was the subject of extensive consultation prior to the commencement of the legislation. At the time, sector representatives strongly advocated that a maximum of 16 children at any one time was appropriate.

The legislation allows care providers to come together with more than 16 children in the group for up to three hours daily if a coordinator is present and the children are provided with activities that are planned by a coordinator OR if the care is provided in the course of a Playgroup Association playgroup.

I understand that your Association has been invited by the Office of Child Care to put forward a proposal about this issue for consideration. I would encourage you to do this.

Poisonous plants

The *Child Care Regulation 2003* includes specific provisions about the building and facilities used to provide child care under a licence. Section 83 of the *Child Care Regulation 2003* states that:

> *"a home must not have any plants accessible to children that are poisonous or otherwise pose an unacceptable danger to the children."*

As discussed at our meeting, the key requirement in the legislation is that the plants must not be "accessible" to children receiving care at the carer's home. Licensees need to consider the location of plants in determining whether they are accessible to children, and require carers to take appropriate action where they are accessible. For instance, plants could be made inaccessible to children by introducing a barrier to the plant. Adopting such courses of action would meet the requirements of the legislation. A pictorial description is available on the Department of Health's website: www.health.qld.gov/poisons.

Swimming

The requirements relating to staff to child ratios that apply when children are swimming whilst child care is being provided are outlined in Section 93(3). "Swimming" is defined in this section as:

> "*any activity where children are likely to enter water in which swimming could be undertaken."*

Children engaged in water play, including using a sprinkler or a small wading pool, are not able to "undertake swimming", therefore the prescribed swimming ratios do not apply.

At the last sector meeting with the Family Day Care Association, the department gave an undertaking to write to all Family Day Care schemes to inform the licensees of the resolution to the issues above. The letter is being finalised for distribution in early 2005.

I appreciate the Association bringing these issues to the attention of Parliament and would like to assure you of the department's commitment to working in partnership with the Family Day Care Association to achieve better outcomes for children and carers. I encourage the association to discuss any other concerns with Ms Anne Reddell, Director, Office of Child Care on 3224 4518 for prompt resolution.

Yours sincerely

Warren Pitt MP
Minister for Communities, Disability Services and Seniors