

██████████
Person with Management and Control
Reid Early Childhood Incorporated
27 Amaroo Street
Reid ACT 2612

Dear ██████████

Decision to issue Compliance Notice

1. As you may be aware, an Authorised Officers (AO) from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, conducted from 6 to 8 July 2021, an assessment and rating visit at Reid Early Childhood Centre - SE-00009829 (the Service), operated by Reid Early Childhood Incorporated - PR-00005862 (the Provider).
2. The assessment and rating visit identified several non-compliances with Education and Care Services National Law Act (ACT) (the Law) and the Education and Care Services National Regulations 2011 (the Regulations). A number of these non-compliances are similar or identical to non-compliances identified during audits at the service on 5 September 2019 and 19 August 2020. A compliance notice to address the non-compliances was issued to the Provider on 27 September 2019.
3. I am satisfied that the Provider is not complying with the provisions of the *Education and Care Services National Law Act 2010*¹ (the Law) and the *Education and Care Services National Regulations* (the Regulations).
4. Web addresses to the Law and the Regulations are provided for your convenience at the end of this Notice.

Facts

5. On 25 January 2012, a provider approval was granted by the Authority for Reid Early Childhood Incorporated - PR-00005862 (the Provider).
6. On 25 January 2012 a service approval was granted for Reid Early Childhood Centre - SE-00009829 (the Service). A copy of the service approval is at Attachment A to this decision.
7. It is a condition of the provider approval that you must comply with the provisions of the *Law* and *Regulations*.
8. It is a condition of the service approval that the Service is operated in a way that-
 - (a) ensures the safety, health and wellbeing of the children being educated and cared for by the services; and

¹ Adopted in the ACT by the *Education and Care Services National Law (ACT) Act 2011*.

- (b) meets the educational developmental needs of the children being educated and cared for by the service.
9. From 6 to 8 July 2021, an assessment and rating visit was conducted by an AO from the Authority at the service. During the assessment and rating visit, several non-compliances with the *Law* and the *Regulations* were identified by the authorised officer.

Law

10. It is a condition of the provider approval that you must comply with the *Law* and the *Regulations*.
11. The following provisions of the *Law* were engaged:

Section 165(1) of the Law - Offence to inadequately supervise children

(1) The approved provider of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000, in the case of an individual.
\$50 000, in any other case.

Section 167 of the Law- Offence relating to protection of children from harms and hazards

(1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from hazard likely to cause injury.

Penalty: \$10 000, in the case of an individual
\$ 50 000, in any other case

Section 174 of the Law- Offence to fail to display prescribed information

(2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

(c) information in respect of any other prescribed matters.

Penalty: \$4000, in the case of an individual.
\$20 000, in any other case.

Regulations

12. The following provisions of the *Regulations* are relevant to the facts as outlined in the Administrative Decision:

Regulation 84 – Awareness of child protection law

The approved provider of an education and care service must ensure that nominated supervisors and staff members at the service who work with children are advised of—

(a) the existence and application of the current child protection law; and

(b) any obligations that they may have under that law.

Penalty: \$1000.

Note. A compliance direction may be issued for failure to comply with this regulation.

Regulation 90 Information about educational program to be kept available

(1) The medical conditions policy of the education and care service must set out practices in relation to the following—

(c) the requirements arising if a child enrolled at the education and care service has a specific health care need, allergy or relevant medical condition, including—

(i) requiring a parent of the child to provide a medical management plan for the child; and

(ii) requiring the medical management plan to be followed in the event of an incident relating to the child's specific health care need, allergy or relevant medical condition; and

(iii) requiring the development of a risk-minimisation plan in consultation with the parents of a child—

(A) to ensure that the risks relating to the child's specific health care need, allergy or relevant medical condition are assessed and minimised; and

(B) if relevant, to ensure that practices and procedures in relation to the safe handling, preparation, consumption and service of food are developed and implemented; and

(C) if relevant, to ensure that practices and procedures to ensure that the parents are notified of any known allergens that pose a risk to a child and strategies for minimising the risk are developed and implemented; and

(D) to ensure that practices and procedures ensuring that all staff members and volunteers can identify the child, the child's medical management plan and the location of the child's medication are developed and implemented; and

(E) if relevant, to ensure that practices and procedures ensuring that the child does not attend the service without medication prescribed by the child's medical practitioner in relation to the child's specific health care need, allergy or relevant medical condition are developed and implemented; and

(iv) requiring the development of a communications plan to ensure that (A) relevant staff members and volunteers are informed about the medical conditions policy and the medical management plan and risk minimisation plan for the child; and

(B) a child's parent can communicate any changes to the medical management plan and risk minimisation plan for the child, setting out how that communication can occur.

Regulation 97 Emergency and evacuation procedures

(3) The approved provider of an education and care service must ensure that—

- (a) in the case of a centre-based service, the emergency and evacuation procedures are rehearsed every 3 months by the staff members, volunteers and children present at the service on the day of the rehearsal and the responsible person in relation to the service who is present at the time of the rehearsal; and
- (b) the rehearsals of the emergency and evacuation procedures are documented.

Penalty: \$2000.

Regulation 103 - Premises, furniture and equipment to be safe, clean and in good repair

- (1) The approved provider of an education and care service must ensure that the education and care service premises and all equipment and furniture used in providing education and care services are safe, clean and in good repair.

Penalty: \$2000

Regulation 151- Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information-

- (a) the name of each educator who works directly with children being educated and cared for by the service;
- (b) the hours that each educator works directly with children being educated and cared for by the service.

Regulation 155 - Interactions

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that--

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Regulation 161- Authorisations to be kept in enrolment record.

- (1) The authorisations to be kept in the enrolment record for each child enrolled at an education and care services are-
- (a) an authorisation, signed by a parent or a person named in the enrolment records as authorised to consent to the medical treatment of the child, for the approved provider, a nominated supervisor or an educator to seek
 - i. medical treatment for the child from a registered medical practitioner, hospital or ambulance service; and
 - ii. transportation of the child by an ambulance service; and

- (b) if relevant, an authorisation given under regulation 102 for the education and care service to take the child on regular outings.

Regulation 162- Health information to kept in enrolment record

The health information to be kept in the enrolment record for each child enrolled at the education and care service is—

- (a) the name, address and telephone number of the child’s registered medical practitioner or medical service; and
- (b) if available, the child’s Medicare number; and
- (c) details of any—
 - (i) specific healthcare needs of the child, including any medical condition; and
 - (ii) allergies, including whether the child has been diagnosed as at risk of anaphylaxis; and
- (d) any medical management plan, anaphylaxis medical management plan or risk minimisation plan to be followed with respect to a specific healthcare need, medical condition or allergy referred to in paragraph (c); and
- (e) details of any dietary restrictions for the child; and
- (f) the immunisation status of the child; and
- (g) if the approved provider or a staff member or family day care educator has sighted a child health record for the child, a notation to that effect.

Reasons

- 13. Having considered the evidence collected during the assessment and rating through observations made by the AO, the Authority is satisfied that the Provider has failed to comply with the *Law* and *Regulations*.
- 14. The Authority is satisfied that the Provider did not ensure that supervision was effective which engages a contravention of section 165 of the *Law*. Specifically, educators were not checking sleeping infants’ breathing by entering the cot room and not conducting checks on sleeping infants for at least 25 minutes. Children were also left unsupervised in the room whilst educator were attending to other tasks outside the room, the bathroom and the sleep space.
- 15. The Authority is satisfied that the Provider did not ensure that children were protected from harms and hazards which engages a contravention of section 167 of the *Law*. Observations made by the AO at the time of the assessment and rating visit showed that children had access to fish tank chemicals placed in an unlocked cupboard at child height and infants had access to a bin placed in an unlocked cupboard. Furthermore, children were not protected from harms and hazards when the service failed to rehearse emergency and evacuation rehearsals within the prescribed timeframe and when the service failed to ensure that children with a medical condition had a medical management plan, a risk minimisation plan and a communication plan in place at the service. Finally, the children were not protected from harms and hazards when the provider failed to ensure that all educators are aware of and understand their responsibilities as mandated reporters under child protection Law in force.

16. The Authority is satisfied that the Provider fail to notify certain information to the Regulatory Authority when the service experienced a gastroenteritis outbreak. This engages a contravention of section 174 of the *Law*.
17. The Authority is satisfied that based on observations of the AO at the time of the assessment and rating visit that prescribed information as required by regulation 151 was not recorded accurately by educators. Specifically, educators were completing tasks in other rooms or spaces without recording that they were no longer working directly with the children as well as educators not filling in the document with their full name.
18. During the assessment and rating visit the AO sighted interactions between an educator and a child demonstrating a breach of regulation 155. Specifically, a child was repeatedly lifted from under their arms at waist height and an educator used her leg to move the child forward. The child was not hurt or struggling but upset. During the interaction, a door was shut behind the child so they could not access the area they wanted to be in and the toys the child was playing with were removed from him. The child was brought to the bathroom to wash their hands before a meal against their will. The child was not hurt and no force was used but the child was crying lying on the floor.
19. During the assessment and rating visit the AO identified non-compliance issues regarding children's record:
 - (a) Regulation 161 – Authorisations to be kept in enrolment record

At the time of the assessment and rating visit some enrolment records did not include all the authorisations stated in regulation 161.
 - (b) Regulation 162 – Health information to be kept on enrolment record

At the time of the assessment and rating visit enrolment documentation was not updated to include information regarding his allergy to sunscreen, not all enrolment records included information regarding a child's immunisation status and health information was not available in children's enrolment records.
20. The Authority is empowered to issue a compliance notice under section 177 of the *Law*.

Section 177 of the *Law*– Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Penalty: \$6 000, in the case of an individual
\$30 000, in any other case.

Decision

21. Based on the evidence before me, I am very concerned about the number of the breaches of the *Law* and the *Regulations* and the impact these may have on the health and safety of the children attending the service. Furthermore, a number of these breaches were identified during a compliance audit at the service on 5 September 2019 and 19 August 2020 and a compliance notice to address the non-compliances was issued to the Provider on 27 September 2019 .
22. Based on the evidence before me, I am satisfied that you were aware of your obligations as an approved provider and I am satisfied that the evidence warrants me to issue a Compliance Notice to you that requires you to address non-compliance with the *Law* as set out in the compliance notice at Attachment B.
23. In making this decision, I have considered the objectives of the *Law* as set out in section 3 of the *Law*. In particular the objective to ensure the safety, health and well-being of children attending education and care services.
24. You must provide evidence of the steps required by close of business of the date mentioned for each item in the table of the Compliance Notice. If you are unable to meet the requirements of this notice, further actions, including suspension or cancellation of your service approval will be considered.
25. Furthermore, due to the ongoing non-compliance of the service, the Provider is required to engage a suitably qualified education and care consultant to assist the service in developing policies and procedures, to increase the Provider and the nominated supervisor's knowledge of the National Law and Regulations to ensure the service is adequately managed, across all areas, and is able to meet the minimum requirements of the National Law and Regulations. The consultant will also be engaged to support the Nominated Supervisor and the educators around best practice educating and caring for young children. The consultant must be approved by the Regulatory Authority.

Appeal Rights

26. A decision to issue a compliance notice is a reviewable decision as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or if not notified, within 14 days of become aware of the decision).
27. An application for review may be made by completing the form AR01 Application for Internal Review of a Reviewable Decision which can be obtained from the ACECQA website.

Legislation

28. The Education and Care Services National Law applies to you as a provider and any service you operate. The National Law is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp>
29. The National Law is made up of an Act and Regulations which can be viewed at:
<http://www.acecqa.gov.au/national-law>, and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
30. If you have any questions about this notice, please contact Delphine Coutin at delphine.coutin@act.gov.au or on 6207 1105.

Yours sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

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