

Ms [REDACTED]
Person with Management or Control
Aranda Afters Association Incorporated
RE: Aranda Afters

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Compliance Notice to the Service Approval

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA). The Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the *Law*), together with receiving and investigating complaints arising under the *Law*.
2. As you are aware, the Authority has recently investigated matters relating to Aranda Afters SE-00009641 (the Service) operated by Aranda Afters Association Incorporated PR-00005802 (the Provider), which engage suspected offences being contravened.
3. The Regulatory Authority is satisfied that the Provider was not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 20 July 2023, the Authority sent the Provider a Show Cause Notice (the Notice), advising the Provider that the Authority had determined there was sufficient evidence to support a case to answer for the Provider regarding a suspected offence under the *Law*.
5. The Notice outlined the grounds for issue, relevant evidence supporting the suspected contravention of the *Law*, and potential compliance actions being considered if the allegation was substantiated. Refer copy of Notice (minus attachments due to size, noting they can be produced on request) at Attachment A.
6. The Notice advised that evidence obtained during the investigation supported the allegation of an offence under the *Law* as follows:

It is alleged that on 23 May 2023, the Provider failed to ensure that all children being educated and cared for by the Service were adequately supervised at all times, in that, children believed to be [REDACTED] (aged 8:8) and [REDACTED] (aged

8:6), left, and returned, to the service unsupervised and unnoticed, contravening section 165(1) of the *Law* and engaging a further contravention of section 167(1) of said *Law*.

7. On 10 August 2023, the Provider submitted a response with attachments. A copy of the response is provided at Attachment B.
8. Within the Notice response, the Provider acknowledges, deeply regrets for the event and submits the following main points:
 - a) The provider is a not-for-profit organisation that provides out of hours school care services to children at the adjoining school. Its management committee is comprised of volunteer parents whose children use the service.
 - b) The preference is that no breaches be found in all the circumstances, noting in particular that many good practices were in place at the time of the Event,
 - c) This is the first-time children have left the premises, and that no actual harm came to the 2 children in question.
 - d) New routine measures have been implemented at the Service embedded in service routine and educator practice.
 - e) Sincerely believes that existing measures in place at its operations (as set out in the Notice) coupled with the measures at Annexure A (Notice response) will ensure the ongoing safety of children.
 - f) Is relieved to note that the ACT Education Directorate has today agreed to construct a boundary fence as from September 2023
 - g) Submits that an informal warning or caution is the most appropriate form of compliance action.
9. The Authority notes the annexures, attachments and photos attached to the response outlining key areas for improvement.

Law

10. In relation to the non-compliance identified, the following provisions of the Law are engaged:

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

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(1) of the *Law* - Offence relating to protection of children from harm and hazards

The Approved Provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

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

Obligations upon Regulatory Authority, Providers and Services

11. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely: "*to ensure the safety, health and wellbeing of children attending education and care services*".
12. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:
 - (a) *that the rights and best interests of the child are paramount; ...*
 - (f) *that best practice is expected in the provision of education and care services.*
13. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - (c) *to monitor and enforce compliance with this law;*
14. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
15. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
16. The *Law* is predominantly a protective *Law* and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Reasons and Decision

17. The Authority has considered all evidence gathered via the investigation process, inclusive of the providers response to the Notice, and is satisfied, on the balance of probabilities, that the Provider has contravened sections 165(1) and 167(1) of the *Law*.
18. The Authority is satisfied that on 23 May 2023, the provider failed to ensure all children were adequately supervised at all times, in that two children, known to be, [REDACTED] (aged 8:8) and [REDACTED] (aged 8:6), left, and subsequently returned to the service unnoticed by educators.
19. The Authority is satisfied that inadequate supervision contributed to the children being able to leave unnoticed and remain off service grounds for a period of time unnoticed by educators until their subsequent return.

20. A Provider's obligation under section 165 of the *Law* is positively and strongly framed– the provider must ensure that all children being educated and cared for by the Service are adequately supervised at all times and is a reasonable precaution to take to protect children from harm and any form of hazard likely to cause injury.
21. In this instance, the Authority has determined that an offence under section 165(1) and 167(1) of the *Law* is substantiated.
22. Considering the evidence obtained, including material submitted by the Provider, and the level of seriousness of the contravention, and the objectives and guiding principles of the *Law*, I have decided that issuing a Compliance Notice is appropriate and in the best interests of children. In making this decision, I have also taken into consideration the Service's previous compliance history.
23. The Authority has also taken into consideration that people and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the *Law*.
24. 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.

25. The Compliance Notice is provided as Attachment C to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce evidence of the steps required by the times indicated for each step within the Notice at Attachment C.

Review Rights

26. A decision to issue a compliance notice and a decision to impose a condition on a service approval are **reviewable decisions** 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 after becoming aware of the decision).

27. An application for review may be made by completing the form *AR01 Application for Internal Review of Reviewable Decision* which can be obtained from the ACECQA website.

Legislation

28. The Education and Care Services National *Law* applies to you as an approved 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. Should you have any questions about this Decision or Compliance Notice please contact Authorised Officer Brian Cropper via email at brian.cropper@act.gov.au.

Yours Sincerely,



Vittorio Colosimo
Acting Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

4 October 2023