

Ms [REDACTED]
Person with Management or Control
Majura Park Childcare Centre Pty Ltd
RE: Torrens Early Learning Centre

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated a complaint relating to the conduct of an educator at Torrens Early Learning Centre SE-40013229 (the Service) operated by Majura Park Childcare Centre Pty Ltd (the Provider).
2. The complaint related to the educator's interactions with children, supervision, safety, and hygiene procedures covering a period from November 2020 through to March 2021.
3. Web addresses for the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations 2011* (the *Regulations*) are provided for your convenience at the end of this decision.

Background

4. On 1 March 2021, the Authority received a direct complaint raising concerns regarding an educator, [REDACTED], employed at the Service from November 2020, including allegations of rough handling of children on multiple occasions, leaving children unsupervised, neglectful behaviour, failure to follow hygiene policies and procedures, and using unsafe resources.
5. Due to the risk occasioned to children by conduct such as that which was alleged, it was determined to investigate suspected offences under section 167 of the *Law*.
6. Initial evidence obtained indicated an additional suspected offence of failure to notify the Authority of a complaint that the *Law* was contravened, being a complaint, that [REDACTED] had hit a child [REDACTED].
7. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including documentation and witness statements obtained under section 215 of the *Law*, and voluntary witness statements.

8. With regard to the complaint that Mr ██████ had hit a child (██████) the Authority obtained the Provider's investigation notes, reportable conduct investigation plan, and a series of still photographs from video footage. Refer Attachment A.
9. Evidence obtained during the investigation raised reasonable grounds for suspicion of an additional offence, under section 169(2) of the *Law*, being a failure by an approved provider to ensure qualification requirements are met. Further details are included below.

Reasons

Allegation One

10. The first allegation considered by the Authority was an allegation that, between 1 November 2020 and 1 March 2021, the Provider failed to take reasonable precautions to protect children from harm and from hazards likely to cause injury in that ██████ was permitted to work directly with children without adequate supervision and promoted to room leader of Bluebells in January 2021, when the Provider was aware that he did not have the required level of skill and experience to undertake those roles.
11. The Authority has carefully considered all available evidence, including witness statements and the employee file (including performance review documentation) of Mr ██████
12. It has been determined by the Authority that there is insufficient evidence to substantiate any offence under section 167(1) of the *Law* on the balance of probabilities.

Allegation Two

13. The second allegation considered by the Authority was an allegation that the Provider had failed to notify the Authority of a complaint that the *Law* had been contravened on 5 March 2021, being an allegation by an educator that ██████ had hit a child (██████) in the outside play area at approximately 10:40am, in contravention of section 174 of the *Law*.
14. Allegation Two engaged the following provision of the *Law*:

Section 174 – Offence to fail to notify certain information to Regulatory Authority

- (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 –
 - (b) any complaints alleging –
 - (ii) that this Law has been contravened;

Penalty: \$4000, in the case of an individual.
 \$20 000, in any other case.
- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to:

- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Regulation 176(2)(b) – Time to notify certain information to Regulatory Authority

For the purpose of section 174(4) of the *Law*, a notice must be provided:

- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident;
15. Examination of the Authority’s records indicated that the complaint was not notified as required.
 16. It is noted that the Provider carried out a reportable conduct investigation as required and made a finding that the complaint was not supported, although did find a breach of policy due to an inappropriate carry. The Provider did consider whether the conduct was an offence under the *Law and* determined that it was not.
 17. However, the outcome of the Provider’s investigation has no bearing on the obligation to notify; it is the complaint being made that enlivens the obligation.
 18. Accordingly, the Authority finds that an offence under section 174 is substantiated on the balance of probabilities.

Decision

19. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance.
20. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the fact that the failure to notify appears to have resulted from a misunderstanding rather than deliberate non-compliance, the Authority has decided to issue this Administrative Action rather than statutory compliance action.
21. The substantiated breach of Section 174 has been recorded on your file and may be taken into account by the Authority when considering any further applications for service approvals in the ACT or in the event of further similar contraventions.

Additional Suspected Offence under Section 169(2) – Qualification Requirements

22. During the course of the investigation, the Authority obtained staff records, including qualifications. According to documentation produced by the Provider under section 215 of the *Law*, [REDACTED] has the following qualifications:
 - a. [REDACTED]
 - b. [REDACTED]

c.

d.

Refer Attachment B for a copy of [REDACTED] qualifications.

23. During the course of the investigation, [REDACTED] provided a witness statement, in which he confirmed as follows:

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

24. The following provisions of the *Law and Regulations* apply:

Section 169(2) of the Law – Offence relating to staffing arrangements

- (2) An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator’s role as prescribed by the national regulations.

Regulation 126 – Centre-based services – general educator qualifications

- (1) The qualification requirements for educators at a centre-based service educating and caring for children preschool age or under are as follows –
- (a) at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and
- (b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.

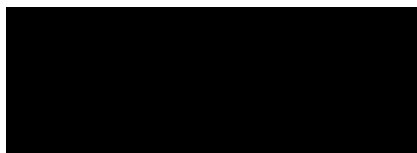
25. Despite [REDACTED] expertise and extensive experience in the early education and care sector, information and documentation to hand indicates that he does not possess an early childhood education and care qualification that is approved by ACECQA. The only approved qualification from De La Salle University is a Bachelor of Elementary Education (Early Childhood Education), which is an approved Diploma level qualification in Queensland.

26. Accordingly, by reason of Regulation 126, [REDACTED] cannot be included when calculating the minimum number of staff required to educate and care for children in a service.
27. In light of current challenging circumstances, the Authority will not be carrying out a formal investigation into suspected past non-compliance and does not require the Provider to make enquiries into suspected non-compliance.
28. However, the Authority advises the Provider that, in the absence of an approved early childhood qualification, [REDACTED] must not be included for the purposes of ensuring compliance with minimum staffing numbers and qualification requirements.
29. If desired, a potential option may be for [REDACTED] to obtain an approved qualification via recognised prior learning, given his experience and expertise in the early childhood education and care sector.
30. The Authority also takes the opportunity to remind the Provider of its obligation to ensure that appropriate procedures are in place to ensure that all educators required to meet minimum staffing levels do meet qualification requirements under the *Law*.

Legislation

31. The *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>.
32. The *Law* and *Regulations* can be viewed at:
 - <http://www.acecqa.gov.au/national-law>, and
 - <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
33. Due to complexities with remote working due to COVID-19 restrictions, please contact Senior Investigator Tanya Masterman by email in the first instance, should you have any queries in relation to this letter.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate
17 September 2021