

██████████
Person with Management and Control
Teddy Bears Childcare Centre Pty Ltd
RE: Teddy Bears Childcare Centre Macarthur

Email: ██████████@hotmail.com
██████████@hotmail.com

Dear ██████████

Decision to issue Compliance Notice

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children Education and Care Assurance (CECA), recently conducted a scheduled compliance audit at Teddy Bears Childcare Centre Macarthur SE-40002200 (the Service), operated by Teddy Bears Childcare Centre Pty Ltd PR-00005870 (the Provider), on 17 December 2020.
2. I am satisfied that the Provider is not complying with the provisions of the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) in regard to the Audit findings.
3. Due to the non-compliances identified via the audit occurring 17 December 2020 I have decided to issue a Compliance Notice allowable under section 177 of the *National Law*.
4. Web addresses to the Law and the Regulations are provided for your convenience at the end of this decision.

Facts

5. On 1 January 2012, a provider approval was granted by the Authority for the Provider. On 7 July 2014, a service approval was granted for the Service Refer copies of the provider and service approvals at Attachment A and B.
6. It is a condition of the approval that the Provider must comply with the provisions of the *Law and Regulations*.
7. On 17 December 2020, an Authorised Officer attended the Service for the purpose of conducting a compliance audit. During the compliance audit, the Authorised Officer observed educator interactions, assessed staff knowledge, and took photographic evidence of prescribed records and the premises. Prescribed records included child enrolment records, educator and staff records, policies and procedures and medication logs. Refer copy of audit report at Attachment C and evidence collected at Attachment D.
8. Documents received by email following the audit included:
 - Determining Responsible Person Policy, received on 18 December 2020;
 - Dealing with Medical Conditions Policy, received on 18 December 2020; and
 - Child Protection Policy received on 23 December 2020.

Refer copies of documents received at Attachment E.

9. Documentation obtained, Authorised Officer assessment and observations during the audit identified the following:
- (a) Nominated Supervisor, [REDACTED], did not have adequate knowledge and understanding of the provision of education to children and the ability to effectively supervise and manage an education and care service, including the willingness to promote continuous improvement within the service, adequate knowledge and understanding of the *Law and Regulations*, nor the willingness to improve the services National Quality Standards current rating.
 - (b) [REDACTED] was not aware of Early Childhood Teacher qualification requirements.
 - (c) Prescribed child enrolment records, staff records, child assessments or evaluations for delivery of the educational program and medication records kept by the Provider demonstrated inaccuracies and were missing prescribed information.
 - (d) [REDACTED] was not aware of changes to current ACT child protection laws as well as not having an awareness or understanding of ACT restrictive practice or reportable conduct requirements. It was further noted that [REDACTED] had last completed any relevant training in 2015, further supporting her knowledge of changes to current ACT child protection laws.
 - (e) Assessments or evaluations of children’s individual learning have not been completed by educators at the Service.
 - (f) The Provider has not addressed the disrepair of the brown lounge being utilised in the Honey Bears room. It was noted that this furniture was observed as being torn and in disrepair at a previous audit in December 2019, was advised of to the Provider, yet has not been fixed and is still in use.
 - (g) A copy of the Law and Regulation available at the Service was not current – dated 2018.

Law

10. Provisions of the *Law and Regulations* engaged by the findings of the audit are as follows:

Section 19 of the Law - Conditions on provider approval

- (1) A provider approval may be granted subject to any conditions that are prescribed in the national regulations or that are determined by the Regulatory Authority.
- (2) Without limiting subsection (1), a provider approval is subject to the condition that the approved provider must comply with this Law.
- (3) A condition of the provider approval applies to the provider of any education and care service or associated children’s service, unless the condition expressly provides otherwise.
- (4) An approved provider must comply with the conditions of the provider approval.

Section 51 of the Law - Conditions on Service Approval

- (1) A service approval is granted subject to the condition that the education and care service is operated in a way that—
 - (a) ensures the safety, health and wellbeing of the children being educated and cared for by the service; and
 - (b) meets the educational and developmental needs of the children being educated and cared for by the service.
- (5) A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by—
 - a. this Law; or

b. the Regulatory Authority.

(8) An approved provider must comply with the conditions of a service approval held by the approved provider.

Section 161A of the Law - Offence for nominated supervisor not to meet prescribed minimum requirements

The approved provider of an education and care service must not nominate an individual to be a nominated supervisor of that service unless that individual meets the prescribed minimum requirements for nomination as a nominated supervisor.

Section 167 of the Law - Offence relating to protection of children from harm 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 any hazard likely to cause injury.

Section 168 of the Law - Offence relating to required programs

(1) The approved provider of an education and care service must ensure that a program is delivered to all children being educated and cared for by the service that—

- (a) is based on an approved learning framework; and
- (b) is delivered in a manner that accords with the approved learning framework; and
- (c) is based on the developmental needs, interests and experiences of each child; and
- (d) is designed to take into account the individual differences of each child.

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.

Section 175 of the Law - Offence relating to requirement to keep enrolment and other documents

(1) An approved provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section

(2) Documents referred to in subsection (1)—

- (a) must, to the extent practicable, be kept at the education and care service premises if they relate to—
 - (i) the operation of the service; or
 - (ii) any staff member employed or engaged by the service; or
 - (iii) any child cared for, or educated at, those premises—
in the previous 12 months; and
- (b) in any other case, must be kept at a place, and in a manner, that they are readily accessible by an authorised officer.

Regulation 74 - Documenting of child assessments or evaluations for delivery of educational program

(1) The approved provider of the education and care service must ensure that, for the purposes of the educational program, the following are documented—

- (a) for a child preschool age or under—

- (i) assessments of the child’s developmental needs, interests, experiences and participation in the educational program; and
 - (ii) assessments of the child’s progress against the outcomes of the educational program; and
 - (b) for a child over preschool age, evaluations of the child’s wellbeing, development and learning.
- (2) In preparing the documentation, the approved provider must—
- (a) consider—
 - (i) the period of time that the child is being educated and cared for by the service; and
 - (ii) how the documentation will be used by the educators at the service; and
 - (c) prepare the documentation in a way that is readily understandable by the educators at the service and the parents of the child.

A compliance direction may be issued for failure to comply with subregulation (1).

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.

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 the education and care service are safe, clean and in good repair.

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

Regulation 117C - Minimum requirements for nominated Supervisor

- (1) For the purposes of section 161A of the Law, the prescribed minimum requirements for nomination of a person as a nominated supervisor of an education and care service are that the person must—
- (a) have attained the age of 18 years; and
 - (b) have adequate knowledge and understanding of the provision of education and care to children; and
 - (c) have the ability to effectively supervise and manage an education and care service.
- (2) In determining whether to nominate a person as a nominated supervisor, an approved provider of an education and care service must have regard to the following matters—
- (a) the history of the person’s compliance with—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and
 - (iii) a children’s services law of a participating jurisdiction; and
 - (iv) an education law of a participating jurisdiction;
 - (b) any decision under the Law to refuse, refuse to renew, suspend, or cancel a licence, approval, registration, certification or other authorisation granted to the person under—
 - (i) the Law as applying in any participating jurisdiction; and
 - (ii) a former education and care services law of a participating jurisdiction; and

- (iii) a children's services law of a participating jurisdiction; and
- (iv) an education law of a participating jurisdiction.

Regulation 147 - Staff Member

The staff record must include the following information in relation to staff members—

- a) the full name, address and date of birth of the staff member;
- b) evidence—
 - (i) of any relevant qualifications held by the staff member; or
 - (ii) if applicable, that the staff member is actively working towards that qualification as provided under regulation 10;
- c) evidence of any approved training (including first aid training) completed by the staff member;
- d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies

Regulation 177 - Prescribed enrolment and other documents to be kept by approved provider

(1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider—

- (a) the documentation of child assessments or evaluations for delivery of the educational program as set out in regulation 74;
- (b) an incident, injury, trauma and illness record as set out in regulation 87;
- (c) a medication record as set out in regulation 92;
- (d) a record of assessments of family day care residences and approved family day care venues conducted under regulation 116;
- (e) in the case of a centre-based service, a staff record as set out in regulation 145;
- (f) a record of volunteers and students as set out in regulation 149;
- (g) the records of the responsible person at the service as set out in regulation 150;
- (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151;
- (i) a record of access to early childhood teachers as set out in regulation 152;
- (j) in the case of a family day care service, a record of staff engaged or employed by the service kept under regulation 154;
- (k) a children's attendance record as set out in regulation 158;
- (l) child enrolment records as set out in regulation 160;
- (m) a record of the service's compliance with the Law as set out in regulation 167;
- (n) a record of each nominated supervisor and any person in day-to-day charge of the education and care service under section 162 of the Law.

(2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

A compliance direction may be issued for failure to comply with subregulation (2) or (3).

Regulation 185 – Law and Regulations to be available

The approved provider of an education and care service must ensure that a copy of the Law and Regulations is accessible at the education and care service premises at all times for use by nominated supervisors, staff members, volunteers, parents of children enrolled at the service and any person seeking to make use of the service.

Regulation 242 - Person taken to be early childhood teachers

- (3) This regulation applies—
 - (a) until 31 December 2021, in the case of the Australian Capital Territory, New South Wales, Queensland, South Australia or Tasmania; and
 - (b) until 31 December 2023, in the case of the Northern Territory or Western Australia.
- (4) A relevant regulation applies to an education and care service as if a reference in regulations 130 to 134 to an early childhood teacher included a reference to a person who—
 - (a) is actively working towards an approved early childhood teaching qualification; and
 - (b) provides the approved provider with documentary evidence that—
 - (i) the person has completed at least 50 per cent of the course; or
 - (ii) holds an approved diploma level education and care qualification.

Reasons

11. Having considered the evidence collected during the compliance monitoring and observations of the Authorised Officer, the Authority is satisfied that the Provider has failed to comply with the *Law* and *Regulations*.
12. The Authority is satisfied that the Provider has not ensured, based on ██████████'s lack of demonstrated knowledge and understanding, that the nominated supervisor currently nominated, identified as ██████████, meets the prescribed minimum requirements for nomination as a nominated supervisor as outlined in *Regulation 117C*, constituting an offence of section 161A of the *Law*.
13. The Authority is satisfied that the Provider has not ensured, based on ██████████'s inability to demonstrate that responsible persons and staff at the Service had attained appropriate and current mandatory reporting training, that the nominated supervisor and each staff member working directly with children has adequate knowledge and understanding of their obligations under child protection laws, as prescribed by *Regulation 84*.
14. The Authority is satisfied that the Provider has not ensured, based on the continued use of brown lounge that is torn and in disrepair, that furniture at the Service is safe, clean and in good repair, as required pursuant to *Regulation 103*, and engaging a contravention of section 167(1) of the *Law*.
15. The Authority is satisfied that the Provider has not ensured, based on the lack of documentation available for inspection on 17 December 2020, that assessments of each child's developmental needs, interests, experiences and participation in the educational program is recorded for children preschool age or under, pursuant to *Regulation 74* and *Regulation 75*, constituting an offence of section 168(1) of the *Law*.
16. The Authority is satisfied that the Provider has not ensured, based on evidence that ██████████ was not aware of Early Childhood Teacher qualification requirements, that educators for the Service were meeting the qualification requirements relevant to the educator's role, as prescribed by *Regulation 242*, and in contravention of section 169(2) of the *Law*.

17. The Authority is satisfied that the Provider failed to ensure that the following prescribed records were accurate, as required by *Regulation 177(2)* and readily available for inspection, constituting three contraventions of section 175 of the *Law*:
 - a) The documentation of child assessments or evaluations for delivery of the educational program as set out in *Regulation 74*;
 - b) A medication record under *Regulation 92*;
 - c) Child enrolment records as set out in *Regulation 160*; and
 - d) Staff members records as set out in *Regulation 147*.
18. Taking into account substantiated contraventions above of sections 161A, 162A, 167(1), 168(1), 169(2) and 175, the Authority is satisfied that the Provider did not ensure that other conditions prescribed in the *Regulations* or imposed by the *Law* were complied with, which further constitutes a contravention of section 19(4) of the *Law* and engaging a contravention of section 167(1) of the *Law*.
19. Furthermore, the Authority is satisfied that the Provider did not ensure that the Service is operated in a way that ensures the safety, health and wellbeing of the children being educated and cared for by the service, and meets the educational and developmental needs of the children being educated and cared for by the service, which constitutes a contravention of section 51(8) the *Law* and engaging a contravention of section 167(1) of the *Law*.
20. The Authority is also satisfied, based on identification of 2018 copies, that a current copy of the of the *Law* and *Regulation* was not accessible at the education and care service premises at all times for use by nominated supervisors, staff members, volunteers, parents of children enrolled at the service and any person seeking to make use of the service, in breach of *Regulation 185*.

Decision

18. Considering the evidence, the objectives and guiding principles of the *Law*, and pursuant to section 177 of the *Law*, I have decided to issue a Compliance Notice (the Notice) that requires the Provider to take all steps directed in the Notice to comply with the relevant provisions. A copy of the Compliance Notice is at [Attachment E](#).
19. I have determined that you must comply within 14 days of receipt of the Compliance Notice.
20. In making this decision, I have considered the objectives of the *Law* as set out in section 3 of the *Law*. In particular:
 - a) to ensure the safety, health and wellbeing of children attending education and care services;
 - b) to improve the educational and developmental outcomes for children attending education and care services;
 - c) to promote continuous improvement in the provision of quality education and care services;
21. Evidence to demonstrate the above is requested to be provided and submitted via email at jo.williams@act.gov.au or by post to:

Children's Education and Care Assurance,
Attention: Jo Williams,
GPO Box 158, Canberra ACT 2601.

22. Please be aware that it is an offence under section 177(3) of the *Law* not to comply with the notice. The penalty is a maximum of \$6000 for an individual and \$30,000 for an entity.

Appeal rights

23. Under section 190 of the *Law*, you may apply for an internal review of this decision. An application must be lodged within 14 days after you are notified of the decision or became aware of the decision. 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.
24. The *Law* applies to you as a Provider engaged within the early education and care sector. Please ensure that a current copy of the *Law* and *Regulation* is available at each education and care service operated by the Provider.
25. 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>.
26. 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>
27. If you have any questions about this notice, please don't hesitate to contact me at clare.brookes@act.gov.au or via telephone on (02) 6205 0615. In my absence please contact Jo Williams, Director – Early Childhood Policy and Regulation, at Jo.Williams@act.gov.au or alternatively via telephone on (02) 620 71289.

Yours Sincerely



Clare Brookes
Senior Director
Early Childhood Policy and Regulation
ACT Education Directorate

8 February 2021