

Ms [REDACTED]  
Person with Management or Control  
Petit Early Learning Journey Pty Ltd  
RE: Petit Early Learning Journey Barton  
Email: [REDACTED]

Dear Ms [REDACTED]

### **Decision to Issue Administrative Letter**

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed allegations raised via a complaint received by the Authority and relating to the operation of Petit Early Learning Journey Barton SE-40003620 (the Service) operated by Petit Early Learning Journey Pty Ltd PR-40002236 (the Provider).
2. The complaint raised allegations of inadequate supervision and failures to protect children which resulting in an enrolled child getting hurt almost on a weekly basis. The complainant described the child being scratched, pushed and bitten regularly by one particular child at the Service.
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance, being failure to notify the Authority of complaints alleging that the Law has been contravened. Web addresses for the Law and the *Regulations* are provided for your convenience at the end of this decision.

### **Facts**

4. On 20 April 2022, the Authority received a complaint alleging inadequate supervision and failures to protect children which resulting in an two year old child, known to be [REDACTED] getting hurt almost on a weekly basis. The complainant described the child being scratched, pushed and bitten regularly by one particular child at the Service.
5. Additionally, the complainant alleged that they had sent multiple emails to the Service raising these allegations and concerns about their child, yet her child continued to get hurt.
6. On 20 April 2022, the Provider submitted a Notification of Complaint (NOT-40694328) to the Authority. The Notification of complaint was regarding communication issues relating to Ms [REDACTED] – mother of [REDACTED]. Refer copy of NOT-40694328 at [Attachment A](#).
7. Between 21 April 2022 and 24 May 2022, the Authority requested additional information from the Provider regarding the complaints, with requested information being submitted as requested.

8. Documents and information submitted by the Provider included:

- a) Copies of educator statements regarding interactions with Ms [REDACTED] (uploaded via NQA ITS).
- b) Incident reports relating to [REDACTED] between 31 March 2021 and 22 April 2022.
- c) Copies of email and text/post correspondence between Ms [REDACTED] and the Service between October 2021 and April 2022 (refer relevant copies of correspondence at Attachment B and C).
- d) A copy of a record of conversation between Provider and Ms [REDACTED] – Refer Attachment D.

### Law

9. Provisions of the *Law* relevant to the complaint notification included:

#### **Section 165(1) of *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.

#### **Section 174 of *Law* - 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—

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
  - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service;
  - or
  - (ii) that this *Law* has been contravened;
- (c) information in respect of any other prescribed matters.

Penalty: \$4 000, 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)(a)(ii) – Time to notify certain information to Regulatory Authority**

- (2) For the purposes of section 174(4) of the Law, a notice must be provided—
  - (a) in the case of a notice under section 174(2)(a)—
    - (ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident.
  - (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.

**Reasons**

- 10. After carefully considering all information gathered throughout the assessment of this matter, the Authority is not satisfied that contraventions of sections 165(1) and 167(1) of the *Law* are engaged or reasonably suspected in this instance.
- 11. However, the Authority is satisfied that section 174(2) of the *Law* has been breached by the Provider.
- 12. In relation to section 174 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has failed to notify the Authority of a complaint alleging that the *Law* has been contravened, within the regulated prescribed timeframe of 24 hours.
- 13. The Authority is satisfied that the Provider did not notify of complaints raised by Ms [REDACTED] on 21 October 2021 and 31 March 2022 (Attachment B and C), alleging contraventions of the *Law* as follows:
  - a) Ms [REDACTED] text/posted complaint of 21 October 2021, is alleging staffing arrangements were not allowing adequate supervision and response to children at the time that she dropped [REDACTED] at the Service – this is an allegation that section 165 and 167 of the *Law* was not being complied with; and
  - b) Ms [REDACTED] has alleged in her complaint of 31 March 2022 that inadequate supervision and reasonable precautions were not being taken had resulted in ongoing injuries being sustained by [REDACTED] whilst being educated and cared for at the Service. Allegations relevant to the not taking of reasonable precautions to protect children consisted of poor communication between educators, and non-accurate account of incidents prevented appropriate steps to be undertaken to mitigate risk of similar incidents and injury – this is an allegation that sections 165 and 167 of the *Law* were not being complied with.
- 14. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of similar allegations being raised, the Authority has decided to issue this administrative action rather than statutory compliance actions.

15. This decision is to remind the Provider of their obligations under the *Law* to ensure that notifiable matters outlined under the *Law*, are notified within regulated timeframes. In addition, this decision is to remind the Provider that the requirement to notify a complaint is at the point of the allegation being made, not after enquires may have been made and the Provider determines if there is substance or not to the allegations.
16. This Decision will be recorded on the Service's file and may be considered in determining the action to be taken, should further breaches of the *Law* or associated *Regulations* be found.

### **Legislation**

17. 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>.
18. 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>
19. If you have any questions in relation to this Decision, please contact Assistant Director, Janine Fairburn, by email at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Education and Care, Regulation and Support  
ACT Education Directorate

21 June 2022