



ACT
Government

Education

Ms [REDACTED]

Person with Management or Control
Woden Community Service Limited
RE: Hughes OSHC

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Compliance Notice

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 assessed a notification of incident that a child had left the Service unnoticed by educators when they should have been attending Hughes OSHC, SE-00009686 (the Service) operated by Woden Community Service Limited, PR-00005883 (the Provider).
3. The 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 12 February 2025, the Authority received a notification of incident that on 11 February 2025, a child known to be [REDACTED], had left the Service unnoticed by staff. The staff at the Service only became aware the child was missing when a parent of another child called up and advised the Juniors Team Leader at 4:40pm that the child was spotted going in the directions of the Hughes shops.
5. The Service manager located the child at 4:50pm at Eddison Park, after being given a lift by a family of the Service

Refer Attachment A for a copy of the Notice (minus attachments).

6. Due to the significant risk of harm to children when inadequately supervised, and not reasonably protected from harms and hazards the Authority determined to take statutory compliance action.

Law

7. Provisions of the *Law* relevant to the matters raised in the Notice include the following:

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: \$11 400, in the case of an individual.
\$57 400, in any other case.

Section 167(1) 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 care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$11 400, in the case of an individual
\$57 400, in any other case.

Obligations upon Regulatory Authority

8. 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*".
9. 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.*
10. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
- (c) *to monitor and enforce compliance with this law;*
 - (d) *to receive and investigate complaints arising under this law.*
11. 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*.

12. 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.
13. 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

14. The Authority has accepted the admission through the notification of incident that [REDACTED] had left the Service and was able to walk to Eddison Park unsupervised, therefore substantiating contraventions of section 165(1) and 167(1) of the *Law*.
15. The Education and Care Services National Law and National Regulations require that all children being educated and cared for at an approved service are adequately supervised at all times and are protected from harm and hazards.
16. During the assessment of the notification of incident, the Authority accepts the admission that the child was unsupervised whilst leaving the Service and walking to Eddison Park. As such, I am satisfied that you have contravened section 165(1) of the *Law*.
17. Furthermore, I am satisfied that failing to ensure adequate supervision resulted in no reasonable precaution being taken to protect children from harms or any hazards likely to cause injury, in that a child, [REDACTED], was able to get to Eddison Park from the Service, involving crossing busy roads during peak hour traffic. As such, I am satisfied that you have contravened section 167(1) of the *Law*.
18. The Authority acknowledges documents submitted by the Provider advising of support strategies being developed in mitigating risk to this child from a reoccurrence of a similar incident.
19. The 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 that the children are in the care of that service.
20. People and entities that choose to participate in regulated activities have 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*.
21. Considering the information submitted by the Provider, the level of seriousness of the contravention, and the objectives and guiding principles of the *Law*, the Authority has decided that issuing a Compliance Notice is appropriate and in the best interests of children.
22. 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: \$6 800, in the case of an individual
\$34 400, in any other case.

23. The Compliance Notice is provided at Attachment B 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 B.**

Review Rights

24. 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 after becoming aware of the decision).
25. 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

26. The *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>
27. 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>
28. Should you have any questions about this Decision or Compliance Notice, please contact Authorised Officer Vittorio Colosimo via email at Vittorio.Colosimo@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director Investigations
Children's Education and Care Assurance
Education and Care, Regulation and Support

18 March 2025