

██████████
Person with Management and Control
Kids Club Early Childhood Learning Centres Pty Ltd
RE: Kids Club Rivett Early Learning Centre

Email: ██████████

Dear ██████████

UNSATISFIED COMPLIANCE NOTICE
Section 177 of Education and Care Services National Law (ACT)

DECISION TO ISSUE COMPLIANCE DIRECTION
Section 176 of Education and Care Services National Law (ACT)

Background

1. This Decision is in relation to the Compliance Notice relating to Kids Club Rivett Early Learning Centre (the Service), operated by Kids Club Early Childhood Learning Centres Pty Ltd (the Provider), which was issued on 8 February 2021. The Provider's initial response was received on 27 February 2021 (Initial Response) and was assessed as unsatisfactory.
2. On 23 March 2021, the Authority wrote to the Provider outlining the areas which had not been satisfied and offering an additional opportunity to provide supportive evidence. Refer [Attachment A](#) for a copy of that letter. On 31 March 2021, the Authority received further documentation from the Provider (Supplementary Response). Refer [Attachment B](#).
3. The Supplementary Response was assessed as partially satisfying the Compliance Notice. On 7 May 2021, the Authority wrote to the Provider outlining the areas which remained unsatisfied, being superseded definitions and other inaccuracies in the two complaints and grievance procedures. Refer [Attachment C](#).
4. On 14 May 2021, the Provider responded with one updated grievance procedure, being the one page document entitled "Complaints & Grievance Procedures" (Further Supplementary Response). Refer [Attachment D](#).
5. The document entitled "6.06 Complaints & Grievance Procedures for families" was not attached. On 21 May 2021, the Authority contacted the Provider by email to advise of this and to require that document to be revised. Refer [Attachment E](#).
6. On 26 May 2021, the Provider forwarded the same email which had been sent on 14 May 2021, with the same document. Refer [Attachment F](#).

Relevant Legislation

Section 176 Compliance directions

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service has not complied with a provision of this Law that is prescribed by the national regulations.
- (2) The Regulatory Authority may give the approved provider a written direction (a **compliance direction**) requiring the approved provider to take the steps specified in the direction to comply with that provision.
- (3) An approved provider must comply with a direction under subsection (2) within the period (being not less than 14 days) specified in the direction.

Penalty: \$2000, in the case of an individual.

\$10 000, in any other case.

Regulation 168 – Education and care service must have policies and procedures

- (1) The approved provider of an education and care service must ensure that the service has in place policies and procedures in relation to the matters set out in subregulation (2).

Penalty: \$1000

- (2) Policies and procedures are required in relation to the following:
 - (o) dealing with complaints.

Policies and procedures to be followed

The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Penalty: \$1000

Decision

7. As outlined above, the Provider has been afforded numerous opportunities to rectify the procedures so as to reflect current requirements under the *National Law*, as required under the Compliance Notice. Because the “Complaints & Grievance Procedures for families” has not been revised as required, and refers to superseded legislation, I have determined to issue a Compliance Direction regarding that procedure.
8. Attachment G to this Decision is a copy of the existing “Complaints & Grievance Procedures for families”. The sections requiring consideration and amendment have been highlighted in yellow. For example, the Regulatory Authority is referred to using three different terms, none of which are correct as far as the ACT is concerned, although it is noted that the Provider is Queensland-based. “Relevant Regulatory Authority” may be more appropriate terminology for a procedure that is used across multiple jurisdictions.
9. With regards to the definition of “notifiable complaint” in Attachment G, please refer to section 174 of the *National Law*. Notifiable complaints are those that allege that a serious incident has occurred or is occurring while a child was or is being educated and cared for by a service; or that the *National Law*, has been contravened. The latter includes complaints of inadequate staffing (section 169), inappropriate discipline (section 166), inadequate supervision (section 165), inadequate programming (section 168), failure to take reasonable precautions to protect children from harm

and hazard likely to cause injury (section 167) etc. Those complaints must be notified within 24 hours.

10. Allegations of (or a reasonable belief that) physical abuse or sexual abuse of a child or children has occurred come within Regulation 175(2)(d) and (e), which are notifiable within seven days (unless it is also a complaint that the *National Law* has been contravened).
11. Accordingly, the definitions highlighted in yellow must be revised so as to be consistent with the current *National Law*.
12. Additionally, the email address (highlighted in yellow on Attachment G) is misspelt.
13. Attachment H to this Decision is the Compliance Direction. You will see that the steps required under the Compliance Direction must be undertaken within 14 days of receipt, including evidence provided to the Regulatory Authority.

Review of decision

14. A decision to issue a Compliance Direction is a **reviewable decision** as defined in section 190 of the *National Law*. Under section 191, you may apply for an internal review of this decision. Any application must be lodged within 14 days after the Provider is notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
15. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from www.acecqa.gov.au.

Legislation

16. The *Law* applies to you as a provider and any service you operate. 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>.
17. 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>
18. If you have any questions about this Decision or the attached Compliance Direction, please contact Authorised Officer, Tanya Masterman, at tanya.masterman@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate
21 June 2021