



Ms [REDACTED]
Person with Management and Control
Woden Community Service Inc.
RE: Lyons OSHC

Email: [REDACTED]
[REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Potential Compliance Action

1. As you may be aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, are investigating suspected offences under the *Education and Care Services National Law (ACT)* (the Law) relating to the operation of Lyons OSHC SE-00013868 (the Service) operated by Woden Community Service Inc. PR-00005883(the Provider).
2. Web addresses to the Law and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
3. The Authority has determined that there is sufficient evidence to support a case to answer for the Provider regarding suspected offences under the Law. However, the Authority’s final determinations will not be made until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
4. The Authority is considering compliance action based on suspected contraventions of the Law and Regulations. If substantiated, the allegations may constitute offences under section 165(1) and 167(1) of the Law (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required.
5. If any offences under the Law are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

6. The evidence obtained during the investigation supports offences under the Law within the following areas:

- a. Failure to adequately supervise children engaging failure to protect children by taking reasonable precautions.

Background Facts

7. On 17 March 2022, the Authority received a notification of complaint from the Provider, alleging that a child had been pressured to engage in inappropriate physical contact with two other children. Refer Attachment A for documentation relevant to the notification
8. Additionally, on 17 March 2022, the Authority received a direct complaint relating to the operation of the Service, and in particular, allegations of inappropriate physical contact between their child and two other children.
9. On 21 March 2022, the Authority received additional information from the Provider in reference to conversations between the Provider and the Principal of Lyons Early Childhood School.
10. On 22 March 2022, the Authority received additional information from the Provider relevant to the notification of complaint. The following documentation was provided:
 - a. Supervision safety plan – OSHC
 - b. Outdoor map
 - c. Working directly with children records (R151) and child attendance records (R158) for whole of Service for 16 March 2022;
 - a. Documentation of the internal investigation for NOT-40670509
11. On 31 March 2022, the Authority received a risk management plan in place from the Provider relevant to the notification of complaint.
12. Due to the risk to children if inadequately supervised and exposed to harms and hazards, the Authority determined to investigate these matters.
13. On 1 April 2022, a notice allowable under section 215 of the *Law* (215 Notice) was sent to the Provider requiring information and documentation to be forwarded to the Authority.
14. On 7 April 2022, the Provider's initial response to the 215 Notice with submission of the following information and prescribed records was received via email:
 - a. Educator/staff records, including staff contact details including personal emails, personal telephone contact details of their Working with Vulnerable People (WWVP) status;
 - b. Record of responsible person/s at the service on 16 March 2022;
 - c. Map of the Service premises and supervision plans, policies and procedures in place, including documentation regarding transitions between the school and the Service;
 - d. Policies and procedures in effect on 16 March 2022 required under Regulation 168(2)(b) and (j).
15. On 10 June 2022, a supplementary 215 Notice was sent to the Provider requiring information and documentation to be forwarded to the Authority. On 16 June 2022, the Provider

responded to the supplementary 215 Notice with submission of the following information and prescribed records was received via email:

- a. Names of all educators working directly with children at the Service on specific dates between 31 January 2022 and 15 March 2022.
 - b. Educators who worked on the above date's personal emails, personal telephone contact details and a copy of their Working with Vulnerable People (WWVP) registration cards.
16. The Authority is considering compliance action based on the evidence gathered, that indicate contraventions of the *Law*. Evidence obtained during the investigation gives grounds to support the following allegation:

Allegation One

It is alleged that, between 1 February 2022 to 16 March 2022, the Provider failed to ensure adequate staffing at all times during which children were being educated and cared for by the Service, in contravention of section 165(1) of the *Law*, engaging further contraventions of s167(1).

Law

17. Legislation relevant to the Allegation is as follows:

Section 165(1) of the *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.

Evidence Relevant to Allegation One

18. Through the course of its investigation, the Authority obtained evidence via witness statements with relevant extracts appearing below:

19. Relevant excerpts from Witness A's statement are as follows:

■ [REDACTED]

■ [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

20. Relevant excerpts from Witness B's statement are as follows:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

21. Relevant excerpts from Witness C's statement are as follows:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- █ [Redacted]
- █ [Redacted]

22. Relevant excerpts from Witness D's statement are as follows:

- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]
- █ [Redacted]

- c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
 - d. Conditions on Service Approval under section 55 of the *Law*.
25. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
26. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified as a result of the investigation.
27. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process. Alternatively (or additionally), the Authority may place a condition on the Service Approval to address the specific non-compliance identified as a result of the investigation.

Right of response

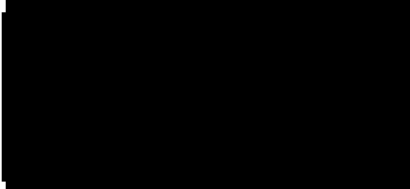
28. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
29. At Attachment B to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to Vittorio.Colosimo@act.gov.au or by post to

Children's Education and Care Assurance
Attention Vittorio Colosimo
GPO Box 158, Canberra ACT 2601.

Caution

30. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under section 296 of the *Law*.
31. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
32. 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>.

33. 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>
34. Should you have any questions about this Show Cause Notice please contact Senior Investigator Vittorio Colosimo, on telephone (02) 6207 1739 or email Vittorio.Colosimo@act.gov.au.



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

3 August 2022