

Ms [REDACTED]
Person with Management or Control
Northside Community Service Limited
RE: Majura Early Childhood Centre

Email: [REDACTED]@northside.asn.au

Dear Ms [REDACTED]

Decision to Issue Administrative Action

1. As you may be aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, recently conducted an investigation into alleged inadequate supervision at Majura Early Childhood Centre SE-00009809 (the Service), operated by Northside Community Service Limited, PR-00005856, (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. Web addresses to the Law and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this Decision.

Facts

4. On 20 October 2020, the Authority received two Notifications of separate incidents from the Provider advising that two children had been unsupervised, both missing and unaccounted for with one child absconding from the Service. Refer NOT-40480409 and NOT-40480468 at Attachment A.
5. Due to the risk to children associated when inadequately supervised, and a potential for associated risk of harm and of hazards likely to cause injury, the Authority determined to investigate.
6. In addition to gathering information from the Provider, the Authority also obtained witness statements in relation to its investigation.
7. On 9 December 2020, Authorised Officers from the Authority attended the Service, allowable under section 199 of the Law, and took photographs of relevant areas relating to the investigation. Refer photographs taken at Attachment B.
8. On 22 February 2021, because of evidence gathered supporting contraventions of the Law, the Authority sent the Provider a Show Cause Notice (the Notice). Refer copy of the Notice (minus attachments due to size) at Attachment C.
9. The Notice outlined grounds for issue, and the evidence relied on by the Authority supporting the allegations that on 19 and 20 October 2020, the Provider was in contravention of sections 165(1) and 167(1) of the Law. In addition, the Notice also outlined the compliance actions being considered by the Authority should the allegation be substantiated.

10. On 3 March 2021, Provider submitted a response to the Notice within the specified timeframe. The Response was received with sixteen attachments of supportive evidence from the Provider. Refer copy of Response (minus attachments due to size) at [Attachment D](#).

Law

11. The following provisions of the *Law* were engaged by the investigation and this Decision:

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.

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.

Reasons

12. After careful consideration of all evidence gathered from the Authority's investigation, inclusive of the Provider's response to the Notice, the Authority is satisfied that the Provider has failed to comply with the *Law*.
13. The Authority is satisfied that on 19 October 2020, a child entered and remained in the preschool room unnoticed and unsupervised by educators, for a period of up to 10 minutes, in contravention of section 165(1) of the *Law* and engaging section 167(1) of the *Law*.
14. Furthermore, the Authority is satisfied that on 20 October 2020, a child exited the service premises unnoticed by educators and subsequently was found by a non-staff member, in contravention of section 165(1) of the *Law* and engaging section 167(1) of the *Law*.
15. The very nature of NOT-40480409 and NOT-40480468 (Attachment A) supports the contraventions, and evidence gathered as part of the Authority's investigation corroborate the circumstances resulting in the contraventions.
16. However, the Authority did note that as part of the Provider's response to the Notice, the Provider submitted evidence to support that appropriate policies, procedures and practices were now in place to mitigate the risk of a similar incident occurring in the future. Those risk mitigation strategies meet the expectations of the Authority.
17. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
18. The Authority has the flexibility to choose the most appropriate action to support Providers to achieve compliance as well as improve outcomes for children. On this occasion, the Authority has determined to issue this Administrative Action rather than impose any statutory compliance actions.

19. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:
- a) The Notifications of Incident were submitted within the prescribed timeframe, and the Service's previous compliance history.
 - b) The Provider's response to the Notice did not refute the allegations, but rather focused on rectification of potential risk to children posed by the incidents on 19 and 20 October 2020.
 - c) The Provider's response to the incident at the time, and implementation strategies, which, if actioned and followed correctly, are deemed appropriate in mitigating risk of a similar incident.
20. Regarding the substantiated offences under sections 165(1) and 167(1) of the *Law*, the Authority is satisfied that already demonstrated subsequent strategies implemented by the Provider will meet the expectations of the Authority, and therefore no further action is required.
21. This Decision will be recorded on your Service file and may be considered in any future applications for approvals, amendments, or waivers. It may also be considered in determining the action to be taken should further breaches of the *Law* or *Regulations* be found.

Legislation

22. 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>.
23. 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>
24. If you have any questions in relation to this letter, please contact Authorised Officer Brian Cropper on (02) 6207 1104 or by email [at brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au).

Yours sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

24 March 2021