

Ms [REDACTED]
Nominated Supervisor
Community Services #1 Incorporated
RE: Mawson Out of School Hours Care

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated complaints alleging that the safety, health and wellbeing of children was compromised at Mawson Out of School Hours Care SE-00009687 (the Service), operated by Community Services #1 Incorporated PR-00005865 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
3. I am considering compliance action based on a contravention of the Law indicated by evidence obtained during an investigation into a complaint regarding the care of a particular child enrolled at the Service. As a delegate of the Authority, I am considering compliance action under Part 7 of the Law, including prohibition from engaging in a role as nominated supervisor.

Grounds for issuing Show Cause for Compliance Action

4. On 17 August 2020, the Provider notified the Authority of a series of incidents on 12 August 2020 involving a child, [REDACTED] (NOT-40464425). Refer Attachment A.1 for a copy of the notification and follow-up documents and emails with the Authority. In that notification, the Provider included numerous strategies being pursued, such as training with [REDACTED] observations of triggers, and that parents/guardians had been notified of behaviour to date.
5. On 21 August 2020, the Provider notified the Authority of a further incident involving [REDACTED] during the afternoon of 19 August 2020 (NOT-40465528). Refer Attachment A.2. In that notification, it was stated that [REDACTED] guardian was notified at the end of the day, and the strategies outlined in NOT-40464425 were referred to.
6. On 2 September 2020, the Provider notified the Authority of a further incident involving [REDACTED] on 1 September 2020 (NOT-40468627). Refer Attachment A.3
7. All notified incidents involved escalation of [REDACTED] following an incident, with restraint and/or shadowing used as a strategy.
8. On 8 September 2020, a direct complaint was received regarding the strategies used in the care of [REDACTED] (a child who had experienced substantial trauma), together with other issues regarding lack of communication regarding incidents.

9. Due to the risk of harm when inappropriate behaviour guidance strategies are implemented, the Authority conducted an investigation.
10. The Authority is considering compliance action based on evidence gathered which indicates a failure to take reasonable precautions to protect a child from harm and hazards, likely to cause injury.

Allegation

11. It is alleged that, between 3 August 2020 and 3 September 2020, in contravention of section 167(2) of the *Law*, you, as the Nominated Supervisor failed to take reasonable precautions to protect a child being educated and cared for by the Service (██████████) from harm or hazard likely to cause injury, in that there was no support plan in place for the child and the methods of restraint used on a child with a trauma background were likely to exacerbate psychological harm and defensive behaviour.

Legislative Provisions Relevant to Allegation

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

A nominated supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Penalty: \$10 000, in the case of an individual

Evidence Relevant to Allegation

12. The Authority's records indicate that you were the nominated supervisor of the Service at the relevant time, having commenced on 15 June 2020. Refer Attachment B.
13. On 11 September 2020, a notice allowable under section 215 of the *Law* (*215 Notice*), was issued to the Provider requiring production of documents by close of business on 21 September 2020. The Provider produced the required documents within the specified timeframe.
14. Documents gathered included:
 - a) all incident reports for incidents involving ██████████ between 3 August 2020 and 3 September 2020. Two PDF files were produced, named "Incident Reports █████ pg 1" and "Incident Reports █████ pg 2" (refer Attachments C.1 and C.2 respectively, as received from the Provider pursuant to section 215);
 - b) all documents relevant to the education and care of ██████████ including:
 - i. enrolment record (Attachment D.1)
 - ii. file and meeting notes (Attachment D.2)
 - iii. emails (refer Attachment D.3);
 - c) relevant policies, including behaviour guidance policy (refer Attachment E).

15. Enrolment documentation indicated that [REDACTED] was a child [REDACTED] [REDACTED] of Additional Child Care Subsidy (child wellbeing).
13. In response to the 215 Notice, the Provider produced two incident reports, regarding incidents of 19 August 2020 and 1 September 2020. Neither incident report was signed by [REDACTED] parent/carer.
14. Evidence gathered indicates that no support plan was in place for [REDACTED] between 3 August 2020 and 3 September 2020 or at any time prior to that. The Provider's Behaviour Guidance Policy (Attachment D) states that:

Behaviour guidance strategies do not under any circumstances involve the use of any physical punishment, isolation, humiliation, intimidation or negative labelling by CS#1 staff.
15. The Policy further refers to development of behaviour guidance plans in consultation with families, considering individual development needs to guide each child, observation and documenting and notification to families of concerning behaviours.
16. During the investigation the Authority obtained statements from numerous witnesses.
17. One statement was obtained utilising information-sharing powers in sections 863B and 863C of the *Children and Young People Act 2008*, a copy of which is Attachment F. Please note that **protected information** has been redacted.
18. Further statements were obtained, including utilising powers under section 215 of the *Law*. Relevant extracts (redacted where necessary) are contained in Attachment G.
19. Evidence indicates that [REDACTED]'s behavioural challenges escalated in Term 3 and that, prior to that time, challenges were minimal. Evidence further indicates that strategies such as physical restraint, and seclusion/isolation were used without appropriate authorisation or being communicated to [REDACTED] Care Team; and that minimal (if any) pro-active support measures were in place, such as de-escalation opportunities upon arrival at the Service, with [REDACTED] instead being required to participate in group time.
20. It is noted that [REDACTED]'s enrolment was suspended on 3 September 2020 and that two one-hour sessions of training on trauma-informed practice took place on 3 and 10 November 2020, with the suspension remaining in force until after training.

Contraventions Supported by Allegation

21. Evidence gathered includes documentation provided under 215 Notice together with witness statements obtained under legislative authority.
22. Evidence gathered relevant to Allegation One appears to support the following contravention of the *Law*:
 - a. It is alleged that, between 3 August 2020 and 3 September 2020, you as Nominated Supervisor failed to take reasonable precautions to protect children being educated and

cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167(1) of the *Law*, in that the Behaviour Guidance Policy was not followed and inappropriate strategies were used regarding [REDACTED]

Right of response

29. You have a right to respond to the allegation set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
30. At Attachment H 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 at tanya.masterman@act.gov.au or by post to Children's Education and Care Assurance, Attention Tanya Masterman, GPO Box 158, Canberra ACT 2601.

Caution

31. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
32. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
33. 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.
34. The *Law* applies to you as a nominated supervisor and any service you are engaged at. 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>.
35. 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>
36. Should you have any questions about this Show Cause Notice please contact Tanya Masterman on telephone (02) 6205 2012 or email tanya.masterman@act.gov.au

Yours Sincerely

[REDACTED]

Clare Brookes
Senior Director
Early Childhood Policy and Regulation
ACT Education Directorate
15 December 2020