



Ms [REDACTED]
Person with Management or Control
[REDACTED]

RE: ACT FAMILY DAY CARE SERVICE

Email: [REDACTED]

Dear [REDACTED],

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA).
2. As you are aware, 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* (the *Law*). One of the Authority's roles is to investigate suspected offences under the *Law*.
3. The Authority is currently investigating multiple suspected offences at ACT Family Day Care Service – SE-00014180 (the Service) operated by [REDACTED] – PR-00008098 (the Provider). 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.
4. Authorised Officers have obtained evidence from other sources and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the Authority's investigation is not complete 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.
5. If substantiated, the allegations may constitute offences under sections 165, 167 and 174 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
6. Where 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. Further details regarding potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

7. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a. Inadequate Supervision
 - b. Protection from harms and hazards.
 - c. Fail to notify Regulatory Authority

Facts

8. On 14 June 2024, the ACT Regulatory Authority (the Authority) received a complaint alleging that on 12 June 2024, a child, known to be [REDACTED] 3 years and 3 months old, left the Service unaccompanied and walked to his home address where he was found by his neighbour.
Refer Attachment A
9. On 17 June 2024, the Authority received a notification that on 12 June 2024 that there had been inadequate supervision of a child.
Refer Attachment B
10. Due to the risk of safety, health and wellbeing of a child when inadequately supervised, the Authority determined to investigate the matter, which engaged suspected offences under sections 165, 167 and 174 of the *Law*.

First set of grounds – Inadequate supervision, protection from harm, failure to notify.

Allegation One

It is alleged that on 12 June 2024, the Provider failed to ensure that all children being educated and cared for by the Service were adequately supervised, in that, a child believed to be [REDACTED] (3:3) left the service unsupervised and walked home unaccompanied, contravening section 165(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

Allegation Two

It is alleged that by 12 June 2024, the Provider failed to ensure that reasonable precaution was taken to protect children from and any form of hazard likely to cause injury, in that,

there were insufficient supports for educators and a child believed to be [REDACTED] (3:3) contravening section 167(1) of the *Law*.

Allegation Three

It is alleged that by 13 June 2024, the Provider failed to notify the Authority of a serious incident that had occurred at the Service on 12 June 2024 when a child believed to be [REDACTED] (3:3) left the service unsupervised and walked home unaccompanied, contravening section 174(2) of the *Law*.

Legislation Relevant to the Allegations

11. The following provisions of the *Law* are relevant to the Allegation:

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: \$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

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.

Section 174(2) of the *Law* – Offence to fail to notify certain information to Regulatory Authority

2. An Approved Provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider-

- a) Any serious incident at the approved education and care service;
- b) Any complaints alleging –
 - i. That a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - ii. That this Law has been contravened;
- c) Information in respect of any other prescribed matters.

Penalty: \$4500, in the case of an individual.

\$22 900, in any other case.

4. A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to –

a) The Regulatory Authority that granted the service approval for the education and care service to which the notice relates; and

b) In the case of a family day care service, the Regulatory Authority in each participating jurisdiction in which the family day care service operates.

1. On 14 June 2024, CCTV footage was provided to the Regulatory Authority which shows [REDACTED] age (3:3) arriving home in the company of a member of the public. The CCTV also shows educator [REDACTED] arriving at the address in their car before leaving shortly after.

Refer Attachment C for screenshots of the CCTV footage relevant to the allegation. Full CCTV footage can be viewed upon request.

2. On 20 June 2024, the Provider furnished documents including the following relevant documents:

a) Incident Report

b) Incident Record

c) Supervision Policy

d) [REDACTED]'s Residence

Refer Attachment D for relevant documents which are redacted in parts to protect individual identities.

Contraventions Support Allegations

3. Evidence gathered appears to support that [REDACTED] was inadequately supervised in that he left the service and walked home unsupervised contravening section 165(1) of the *Law*, and giving rise to a contravention of 167(1) of the *Law*.
4. Ensuring that children are adequately supervised and remain in the Service is viewed as being a reasonable precaution to protect children from harm likely to cause injury.
5. Evidence gathered supports that the Provider notified the Authority on the 17 June 2024 after the Authority reached out for further information, contravening section 174(2) of the *Law*.

Potential Compliance Action

12. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions if an offence is substantiated. Potential compliance actions include:

- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
 - d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
 - f. Cancellation of the service approval under section 79 of the *Law*.
13. 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.
14. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

Right of response

15. As mentioned previously, this is the Provider's 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.
16. At Attachment E 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 declan.barbagallo@act.gov.au or by post to:

Children's Education and Care Assurance (CECA)
Education Directorate
Attention: Declan Barbagallo
GPO Box 158, Canberra ACT 2601.

Caution

17. 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*.
18. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.

19. 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.
20. 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>.
21. 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>
22. Should you have any questions about this Show Cause Notice please contact Declan Barbagallo on declan.barbagallo@act.gov.au.

Yours Sincerely

Nicole Withers
A/g Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

30 July 2024