



Ms [REDACTED]  
Company Director  
OSHCLUB PTY LTD  
Suite 2, Level 1  
1183 Toorak Rd  
CAMBERWELL VIC 3124

Email: [REDACTED]

Dear Ms [REDACTED]

### **Decision to Issue Compliance Notice**

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. 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*) and the Education and Care Services National Regulations (the *Regulations*).
2. As you are aware, Authorised Officers from the ACT Regulatory Authority (the *Authority*), also known as Children's Education and Care Assurance (CECA), recently conducted unannounced compliance audits at six approved services in the ACT operated by OSHClub PTY LTD PR-40004402 (the Provider).
3. The authorised officers gathered evidence via their monitoring powers under the *Law*. This consisted of documentation, photos, observations, and conversations held with staff. The evidence gathered supports contraventions of the *Law* and *Regulations*. Further information follows and each contravention has been set out within this decision.
4. I am satisfied that the Provider did not comply with the provisions of the Education and Care Services National Law Act (ACT) (the *Law*) and the Education and Care Services National Regulations (the *Regulations*).
5. Web addresses for the Law and the Regulations are provided for your convenience at the end of this notice.

### **Background Facts**

6. Between 19 February and 15 May 2024, the Authority conducted compliance audits at six approved services operated by the Provider.
7. Evidence collected at the time of the audits demonstrate multiple contraventions of the *Law* and the *Regulations*.

## Grounds

8. At the time of the visit at Harrison OSHClub, authorised officers identified that the service was operating without a nominated supervisor, contravening Section 161 of the *Law*.
9. At the time of the visit at St Peter and Paul OSHClub and Nicholls OSHClub, Authorised Officers observed inadequate supervision, contravening Section 165 (1) of the *Law*.
  - a. Children were observed unsupervised in areas such as kitchenettes.
  - b. An educator on their second day at the service was left alone supervising 23 children in an outdoor space.
  - c. Educators were observed using personal mobile phones, for non-work purpose, whilst responsible for supervising children.
  - d. Educators were observed moving between different areas without communicating their whereabouts with other educators, resulting in inadequate supervision.
  - e. Children playing in the bathrooms and were observed coming out of the bathrooms with food.
10. The Provider did not ensure that every reasonable precaution is taken to protect children from harm and hazards, contravening Section 167 (1) of the *Law*.
  - a. At Nicholls OSHClub afternoon tea did not demonstrate how children's dietary requirements were planned for and implemented.
  - b. At Harrison OSHClub processes were not in place to avoid food contamination and minimise risk of children's allergic reactions during food preparation.
  - c. At Farrer OSHClub and Harrison OSHClub, hazardous products and medication were in children's reach.
  - d. At Farrer OSHClub, a child's medication was past the expiry date.
11. At St Thomas Aquinas OSHClub evidence demonstrating how the educational program is developed based on children's developmental needs, interests and experiences was minimal. The evidence was not clear of how the current educational program aligns with the approved learning frameworks, contravening Section 168 (1) of the *Law*.
12. At the time of the audits, authorised officers identified contravention with Section 169 (2) of the *Law* and *Regulations* 126 (1), 260, 261 and 262 through the following:
  - a. At St Peter and Paul OSHClub, qualification requirements were not met from 6:45 to 8:00 and from 14:00.
  - b. At Farrer OSHClub, educator to child ratio was not met.
  - c. At Farrer OSHClub and Harrison OSHClub, no Diploma qualified educator was working despite the services having preschool age children in attendance.

- d. At Harrison OSHClub, no first, second or subsequent qualified educators could be identified by the authorised officer or by staff members and 68 children were in attendance.
  - e. At St John the Apostle OSHClub, no second qualified educator were rostered on from 13:00. The service had a maximum of 36 children on the day.
13. At St Peter and Paul OSHClub, Harrison OSHClub, Farrer OSHClub, and St Thomas Aquinas OSHClub, not all prescribed information was displayed, contravening Section 172 of the *Law*.
- a. No prescribed information displayed in the room the service was operating from at St Peter and Paul OSHClub

Across all three services the following were examples of other missing information:

- b. Service approvals details.
  - c. Name of nominated supervisor(s).
  - d. Name and contact number of the person for complaints at the services.
  - e. Name and position of responsible person.
  - f. Hours and days of operation.
  - g. Name of educational leader being incorrect.
14. The nominated supervisors recorded for Harrison OSHClub was no longer employed by the Provider, contravening Section 173 (2) (b) of the *Law*.
15. A quality improvement plan for Harrison OSHClub had not been reviewed in accordance with the requirements of Regulation 56 (1).
16. Authorised officers identified that documentation and evaluations for the delivery of the educational program was minimal and not meeting the requirements of regulation 74 the following ways:
- a. At Nicholls OSHClub and St Thomas Aquinas OSHClub, documentation and evaluations of children's wellbeing, development, learning and engagement in the program was limited
  - b. At Farrer OSHClub and Harrison OSHClub, the teams were not using the approved Early Years Learning Framework for preschool age children.
  - c. At Harrison OSHClub references made to the approved My Time Our Place framework were inaccurate.
17. At St Peter and Paul OSHClub, no educational program was displayed and there appeared to be no program in place for that day breaching the requirements of Regulation 75.
18. At Harrison OSHClub, no evidence could be provided to the authorised officer demonstrating that families are provided with information on their child's participation in the program, breaching the requirements of Regulation 76.
19. At Harrison OSHClub Health, hygiene and safe food practices observed by the Authorised Officer demonstrated a breach of Regulation 77 (1). Specifically:
- a. Packets of food were not sealed and stored appropriately after opening.
  - b. Children were not supported to wash hands before eating.

20. At St Peter and Paul, the authorised officer identified that children did not have access to drinking water at all times, a breach of Regulation 78 (1) (a).
21. The provision of food was not consistently nutritious and adequate in quantity, breaching Regulation 79 (1). Specifically, the following was identified during audits:
  - a. The children from the second school attending Nicholls OSHClub were served the leftover food from the first group of children arriving at the service.
  - b. The food served at Farrer OSHClub and Harrison OSHClub was not nutritious and the menu had not been developed in line with the service's nutrition policy.
  - c. At Farrer OSHClub changes to the menu were not recorded.
22. At Farrer OSHClub and St Thomas Aquinas OSHClub educators were not consistently aware of their responsibilities as mandated reporters under the Children and Young People Act, a breach of Regulation 84 (1).
23. At St Peter and Paul OHCClub children's needs for rest, and potentially sleeps, had not been considered in the space the service operated from at the time of the audit. This represents a breach of Regulation 84A (1).
24. At St Peter and Paul OSHClub, Nicholls OSHClub and St John the Apostle OSHClub, no risk assessment for purposes of sleep and rest could be provided to the Authorised Officers, a breach of Regulation 84C.
25. The requirements of regulation 89 (1) (b) and (c) were not met in the following ways:
  - a. At Nicholls OSHClub and Farrer OSHClub, items in the first aid kits were passed the expiry date or were not available.
  - b. At Harrison OSHClub and Nicholls OSHClub, first aid kits were not easily recognisable and readily accessible to staff, with no signage that indicated their location.
26. Risk minimisation plans and communication plans were non-compliant with the requirements of Regulation 90 in the following ways:
  - a. At Farrer OSHClub, some risk minimisation plans were out of date according to the Provider's own review dates.
  - b. At St Thomas Aquinas OSHClub multiple risk minimisation plans and communication plans were incomplete. Plans of children who have left the service were not removed.
27. The requirements of Regulation 97 were non-compliant in the following ways:
  - a. No evacuation floor plans, or instruction were displayed at the location the service was operating from on 29 April 2024 for St Peter and Paul OSHClub. The risk assessment for potential emergencies had not been updated or a separate risk assessment completed to operate from the school classroom. No lockdown rehearsals had been rehearsed as required under regulations.

- b. At Farrer OSHClub, the risk assessment was due for renewal and had not been completed. In addition, the floor plans were inaccurate as they did not show the current location when looking at the plans.
  - c. At Harrison OSHClub floors plans were inaccurate, in addition, some floor plans were unreadable with small, blurry writing.
  - d. At St Thomas Aquinas OSHClub, the risk assessment of potential emergencies was brief and restricted in detail
28. At Harrison OSHClub, it was identified that the risk assessment for excursions was missing some of the prescribed information, a breach of Regulation 101.
29. At Nicholls OSHClub and St Thomas Aquinas OSHClub, no risk assessment for the purposes of safe arrival of children could be presented to Authorised Officers, a breach of Regulation 102AAC.
30. Authorised officers identified a breach of Regulation 103 (1) in the following ways:
- a. At Nicholls OSHClub, school bags were blocking exit paths in the event of an evacuation. Trestle tables were leaning against partition wall, with children observed playing in and around them. Children were climbing over large movable blocks next to the stage.
  - b. At St John the Apostle, a cupboard containing chemicals was left unlocked despite a sign saying that the cupboard must always be locked.
31. At Nicholls OSHClub, minimal experiences were set up and limited resources and equipment were available, a breach of Regulation 105.
32. At Nicholls OSHClub, there was no written staff consent record to be the responsible person, a breach of Regulation 117A.
33. Designations in writing of educational leaders were inaccurate or missing at St Peter and Paul OSHClub and St John the Apostle OSHClub, breaching Regulation 118 and 148.
34. At Nicholls OSHClub, Farrer OSHClub, Harrison OSHClub, St Thomas Aquinas OSHClub and St Peter and Paul OSHClub, staff members records were missing prescribed information, a breach of Regulation 147.
35. At Farrer OSHClub and Harrison OSHClub records of educators working directly with children were inaccurate during the visits, breaching Regulation 151.
36. At St Peter and Paul OSHClub, children attendance records were not accurate, breaching Regulation 158.
37. At Harrison OSHClub, evidence could not be provided to demonstrate that children's health information is kept in enrolment records, a breach of Regulation 162.
38. At St John the Apostle OSHClub, no record of service compliance could be provided, a breach of Regulation 167 (1) (c).

39. Authorised officers identified that some policies and procedures were not in place or had not been reviewed in accordance with legislated requirements, breaching Regulations 168 and 171 (1). Specifically, the following was identified:
- a. At Farrer OSHClub, the sleep and rest for children policy had not been reviewed to include the amendments that came into effect on 1 October 2023. In addition, the safe arrival of children policy was not provided.
  - b. At St John, the Apostle OSHClub the sleep and rest policy and procedure, the safe arrival of children policy and the child safe environment policy were not available.
40. Policies and procedures were not consistently followed at the time of the audits, breaching regulation 170. Specifically, the following was identified:
- a. At Harrison OSHClub, the menu had not been developed in accordance with the service's nutrition policy
  - b. At St Thomas Aquinas OSHClub, the responsible person, did not meet the requirements as set out in the service's policy
41. Prescribed enrolment and other documents to be kept by the Provider were inconsistently kept in accordance with the requirements of Regulation 177. Specifically, the following was identified:
- a. At St Peter and Paul attendance records were inaccurate, as families or staff members did not have access to the electronic device to sign the children out. In addition, medication records were incomplete.
  - b. At Harrison OSHClub administration of medication and authorisations of medication records were incomplete. In addition, authorisation for excursions were incomplete.
42. At Harrison OSHClub, St Thomas Aquinas OSHClub and St John the Apostle OSHClub, no current versions of the *Law* and the *Regulations* were available, a breach of Regulation 185.
43. The Authority received a direct complaint that alleges that at Nicholls OSHClub minimal activities are provided for the children , there is inadequate supervision and food supplied does not meet nutritional requirements. It is alleged that this has resulted in physical altercations between children, with staff ineffectively providing the guidance and support required.
44. Evidence gathered during the audits supports the allegation and indicates a pattern of non-compliance, which needs to be addressed as per the compliance notice.

## **Law and Regulations**

### Legislative Provisions Relevant to Compliance Audits

#### **Section 161 of the *Law* - Offence to operate education and care service without nominated supervisor**

The approved provider of an education and care service must not operate the service unless there is at least one nominated supervisor for that service.

Penalty: \$5700, in the case of an individual.

\$28 700, in any other case.

**Section 165 of the *Law* - Offence to inadequately supervise children**

(1) 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 cared 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 168 (1) of the *Law* - Offence relating to required programs**

(1) The approved provider of an education and care service must ensure that a program is delivered to all children being educated and cared for by the service that—

- (a) is based on an approved learning framework; and
- (b) is delivered in a manner that accords with the approved learning framework; and
- (c) is based on the developmental needs, interests, and experiences of each child; and
- (d) is designed to take into account the individual differences of each child.

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

\$22 900, in any other case.

**Section 169(2) of the *Law* – Offence relating to staffing arrangements**

An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

**Section 172 of the *Law* - Offence to fail to display prescribed information**

(1) An approved provider of an education and care service (other than a family day care service) must ensure that the prescribed information about the following is displayed, in the prescribed form (if any), so that it is clearly visible to anyone from the main entrance to the education and care service premises—

- (a) the provider approval;

- (b) the service approval;
- (c) each nominated supervisor of the service;
- (d) the rating of the service;
- (e) any service waivers or temporary waivers held by the service;
- (f) any other prescribed matters.

Penalty: \$3400, in the case of an individual.

\$17 200, in any other case.

**Section 173 of the Law - Offence to fail to notify certain circumstances to Regulatory Authority**

(2) An approved provider must notify the Regulatory Authority of the following in relation to an approved education and care service operated by the approved provider—

- (b) if a nominated supervisor of an approved education and care service—
  - (i) ceases to be employed or engaged by the service; or
  - (ii) is removed from the role of nominated supervisor; or
  - (iii) withdraws consent to the nomination.

**Regulation 56 (1) Review and revision of quality improvement plans**

(1) The approved provider of an education and care service must review and revise the quality improvement plan for the service having regard to the National Quality Standard—

- (a) at least annually; and
- (b) at any time when directed by the Regulatory Authority.

**Regulation 74 Documenting of child assessments or evaluations for delivery of educational program**

(1) The approved provider of the education and care service must ensure that, for the purposes of the educational program, the following are documented—

- (a) for a child preschool age or under—
  - (i) assessments of the child's developmental needs, interests, experiences, and participation in the educational program; and
  - (ii) assessments of the child's progress against the outcomes of the educational program; and
- (b) for a child over preschool age, evaluations of the child's wellbeing, development, and learning.

(2) In preparing the documentation, the approved provider must—

- (a) consider—

- (i) the period of time that the child is being educated and cared for by the service; and
  - (ii) how the documentation will be used by the educators at the service; and
- (b) prepare the documentation in a way that is readily understandable by the educators at the service and the parents of the child.

Note—

A compliance direction may be issued for failure to comply with subregulation (1).

**Regulation 75 Information about educational program to be kept available**

The approved provider of an education and care service must ensure that—

- (a) information about the contents and operation of the educational program for the service is displayed at the education and care service premises at a place accessible to parents of children being educated and cared for by the service; and
- (b) a copy of the educational program is available at the following places for inspection on request—
  - (i) in the case of a centre-based service, at the education and care service premises;
  - (ii) in the case of a family day care service, at each family day care residence or family day care venue.

Note—

A compliance direction may be issued for failure to comply with this regulation.

**Regulation 76 Information about educational program to be given to parents**

The approved provider of an education and care service must ensure that a parent of a child being educated and cared for by the service is provided with the following information on request—

- (a) information about the content and operation of the educational program so far as it relates to that child;
- (b) information about the child's participation in the program;
- (c) a copy of the documents kept under regulation 74 in respect of the child.

Note—

A compliance direction may be issued for failure to comply with this regulation.

**Regulation 77 Health, hygiene, and safe food practices**

(1) The approved provider of an education and care service must ensure that nominated supervisors and staff members of, and volunteers at, the service implement—

- (a) adequate health and hygiene practices; and
- (b) safe practices for handling, preparing, and storing food—

to minimise risks to children being educated and cared for by the service.

Penalty: \$2200.

**Regulation 78 Food and beverages**

- (1) The approved provider of an education and care service must ensure that children being educated and cared for by the service—
- (a) have access to safe drinking water at all times

Penalty: \$2200.

**Regulation 79 Service providing food and beverages**

- (1) The approved provider of an education and care service that provides food or a beverage to children being educated and cared for by the service must ensure that—
- (a) the food or beverage provided is nutritious and adequate in quantity; and
  - (b) the food or beverage provided is chosen having regard to the dietary requirements of individual children taking into account—
    - (i) each child’s growth and development needs; and
    - (ii) any specific cultural, religious or health requirements.

Penalty: \$2200.

**Regulation 84 Awareness of child protection law**

- (1) The approved provider of an education and care service must ensure that a person specified in subregulation (2) who works with children is advised of—
- (a) the existence and application of the current child protection law; and
  - (b) any obligations that the person may have under that law.

Penalty: \$1100.

Note—

A compliance direction may be issued for failure to comply with subregulation (1).

**Regulation 84A Sleep and rest**

- (1) The approved provider of an education and care service must take reasonable steps to ensure that the needs for sleep and rest of children being educated and cared for by the

service are met, having regard to the ages, developmental stages, and individual needs of the children.

Penalty: \$1100.

Note—

A compliance direction may be issued for failure to comply with subregulation (1).

**Regulation 84C Risk assessment for purposes of sleep and rest policies and procedures**

(1) The approved provider of an education and care service must ensure that a sleep and rest risk assessment is conducted in accordance with this regulation—

- (a) at least once every 12 months; and
- (b) as soon as practicable after becoming aware of any circumstance that may affect the safety, health, or wellbeing of children during sleep and rest.

Penalty: \$2200.

Note—

A compliance direction may be issued for failure to comply with subregulation (1).

(2) A risk assessment must consider the following—

- (a) the number, ages and developmental stages of children being educated and cared for—
  - (i) by the education and care service; or
  - (ii) in the case of a family day care service, at each family day care residence or approved family day care venue of the service;
- (b) the sleep and rest needs of children being educated and cared for (including health care needs, cultural preferences, sleep and rest needs of individual children and requests from families about a child's sleep and rest)—
  - (i) by the education and care service; or
  - (ii) in the case of a family day care service, at each family day care residence or approved family day care venue of the service;
- (c) the suitability of staffing arrangements to adequately supervise and monitor children during sleep and rest periods;
- (d) the level of knowledge and training of staff supervising children during sleep and rest periods;
- (e) the location of sleep and rest areas, including the arrangement of cots and beds within the sleep and rest areas—
  - (i) at the education and care service; or
  - (ii) in the case of a family day care service, at each family day care residence or approved family day care venue of the service;

- (f) the safety and suitability of any cots, beds and bedding equipment, having regard to the ages and developmental stages of the children who will use the cots, bed and bedding equipment;
  - (g) any potential hazards—
    - (i) in sleep and rest areas; or
    - (ii) on a child during sleep and rest periods;
  - (h) the physical safety and suitability of sleep and rest environments (including temperature, lighting, and ventilation)—
    - (i) at the education and care service; or
    - (ii) in the case of a family day care service, at each family day care residence or approved family day care venue of the service;
- (3) As soon as practicable after conducting a risk assessment under this regulation, the approved provider of an education and care service must make any necessary updates to the sleep and rest policies and procedures.
- (4) The approved provider must keep a record of each risk assessment conducted under this regulation.

**Regulation 89 First aid kits**

- (1) The approved provider of an education and care service must ensure that first aid kits are kept in accordance with this subregulation, wherever the service is providing education and care to children—
- (b) the first aid kits must be suitably equipped; and
  - (c) the first aid kits must be easily recognisable and readily accessible to adults, having regard to the design of the education and care service premises.

Penalty: \$2200.

**Regulation 90 Medical conditions policy**

- (1) The medical conditions policy of the education and care service must set out practices in relation to the following—
- (a) the management of medical conditions, including asthma, diabetes, or a diagnosis that a child is at risk of anaphylaxis;
  - (b) informing nominated supervisors and staff members of, and volunteers at, the service of practices in relation to managing those medical conditions;
  - (c) the requirements arising if a child enrolled at the education and care service has a specific health care need, allergy, or relevant medical condition, including—
    - (i) requiring a parent of the child to provide a medical management plan for the child; and

- (ii) requiring the medical management plan to be followed in the event of an incident relating to the child's specific health care need, allergy, or relevant medical condition; and
  - (iii) requiring the development of a risk-minimisation plan in consultation with the parents of a child—
    - (A) to ensure that the risks relating to the child's specific health care need, allergy or relevant medical condition are assessed and minimised; and
    - (B) if relevant, to ensure that practices and procedures in relation to the safe handling, preparation, consumption, and service of food are developed and implemented; and
    - (C) if relevant, to ensure that practices and procedures to ensure that the parents are notified of any known allergens that pose a risk to a child and strategies for minimising the risk are developed and implemented; and
    - (D) to ensure that practices and procedures ensuring that all staff members and volunteers can identify the child, the child's medical management plan and the location of the child's medication are developed and implemented; and
    - (E) if relevant, to ensure that practices and procedures ensuring that the child does not attend the service without medication prescribed by the child's medical practitioner in relation to the child's specific health care need, allergy or relevant medical condition are developed and implemented; and
  - (iv) requiring the development of a communications plan to ensure that—
    - (A) relevant staff members and volunteers are informed about the medical conditions policy and the medical management plan and risk minimisation plan for the child; and
    - (B) a child's parent can communicate any changes to the medical management plan and risk minimisation plan for the child, setting out how that communication can occur.
- (2) The medical conditions policy of the education and care service must set out practices in relation to self-administration of medication by children over preschool age if the service permits that self-administration.
- (3) In subregulation (2), the practices must include any practices relating to recording in the medication record for a child of notifications from the child that medication has been self-administered.

**Regulation 97 Emergency and evacuation procedures**

- (1) The emergency and evacuation procedures required under regulation 168 must set out—
- (a) instructions for what must be done in the event of an emergency; and
  - (b) an emergency and evacuation floor plan; and
  - (c) if the education and care service premises is located within a multi-storey building shared with other occupants and on a storey with no direct egress to an assembly area—

- (i) all possible evacuation routes from each storey on which the premises is located; and
  - (ii) the evacuation routes that are proposed to be used in an evacuation; and
  - (iii) how all children will be safely evacuated from the premises, including nonambulatory children; and
  - (iv) the stages in which an evacuation will be carried out; and
  - (v) the identity of the person in charge of an evacuation; and
  - (vi) the roles and responsibilities of staff members during an evacuation; and
  - (vii) the arrangements made with the other occupants of the multi-storey building in relation to the evacuation of the multi-storey building.
- (2) For the purposes of preparing the emergency and evacuation procedures, the approved provider of an education and care service must ensure that a risk assessment is conducted to identify potential emergencies that are relevant to the service.

Penalty: \$2200.

- (2A) The approved provider of a centre-based service must review the risk assessment conducted under subregulation (2)—
- (a) at least once every 12 months; and
  - (b) as soon as practicable after becoming aware of any circumstance that may affect the safe evacuation of children from the service.

Penalty: \$2200.

- (2B) As soon as practicable after reviewing the risk assessment under subregulation (2A), the approved provider of a centre-based service must make any necessary updates to the emergency and evacuation policies and procedures.

Penalty: \$2200.

- (3) The approved provider of an education and care service must ensure that—
- (a) in the case of a centre-based service, the emergency and evacuation procedures are rehearsed every 3 months by the staff members, volunteers and children present at the service on the day of the rehearsal and the responsible person in relation to the service who is present at the time of the rehearsal; and
  - (ab) in the case of a family day care service, the emergency and evacuation procedures are rehearsed every 3 months by each family day care educator and the children being educated and cared for by the family day care educator on that day; and
  - (b) the rehearsals of the emergency and evacuation procedures are documented.

Penalty: \$2200.

- (4) The approved provider of an education and care service must ensure that a copy of the emergency and evacuation floor plan and instructions are displayed in a prominent position

near each exit at the education and care service premises, including a family day care residence and approved family day care venue.

Penalty: \$2200.

Note—

A compliance direction may be issued for failure to comply with subregulation (2), (2A), (3) or (4).

**Regulation 101 Conduct of risk assessment for excursion**

(1) A risk assessment for an excursion must—

- (a) identify and assess risks that the excursion may pose to the safety, health or wellbeing of any child being taken on the excursion; and
- (b) specify how the identified risks will be managed and minimised.

(2) Without limiting subregulation (1), a risk assessment must consider—

- (a) the proposed route and destination for the excursion; and
- (b) any water hazards; and
- (c) any risks associated with water-based activities; and
- (d) if the excursion involves transporting children—
  - (i) the means of transport; and
  - (ii) any requirements for seatbelts or safety restraints under a law of each jurisdiction in which the children are being transported; and
  - (iii) the process for entering and exiting—
    - (A) the education and care service premises; and
    - (B) the pick-up location or destination (as required); and
  - (iv) procedures for embarking and disembarking the means of transport, including how each child is to be accounted for on embarking and disembarking; and
- (e) the number of adults and children involved in the excursion; and
- (f) given the risks posed by the excursion, the number of educators or other responsible adults that is appropriate to provide supervision and whether any adults with specialised skills are required; and
- (g) the proposed activities; and
- (h) the proposed duration of the excursion; and
- (i) the items that should be taken on the excursion.

**Regulation 102AAC Risk assessment for the purposes of safe arrival of children policies and procedures**

(1) For the purposes of preparing the safe arrival of children policies and procedures under regulation 102AAB(1), the approved provider of an education and care service must ensure that a risk assessment is conducted in accordance with this regulation.

Penalty: \$2200.

Note

A compliance direction may be issued for failure to comply with subregulation (1).

(2) The approved provider must conduct a risk assessment—

- (a) at least once every 12 months; and
- (b) as soon as practicable after becoming aware of any circumstance that may affect the safe arrival of children travelling between an education and care service and any other education or early childhood service.

(3) A risk assessment must—

- (a) identify and assess any risks that a child's travel between an education and care service and any other education or early childhood service may pose to the safety, health, or wellbeing of the child; and
- (b) specify how the identified risks will be managed and minimised.

(4) Without limiting subregulation (3), a risk assessment must consider the following, in respect of a child who travels between an education and care service and any other education or early childhood service—

- (a) the age, developmental stage, and individual needs of the child;
- (b) the role and responsibilities of the following persons (if applicable)—
  - (i) in the case of a child who leaves the service premises to travel to an education and care service premises of another education and care service, the nominated supervisor of each service;
  - (ii) the child's parent;
  - (iii) an authorised nominee named in the child's enrolment record;
  - (iv) a person authorised by—
    - (A) the child's parent; or
    - (B) an authorised nominee named in the child's enrolment record;
- (c) the role and responsibilities of the service the care of which the child is entering or leaving;
- (d) the communication arrangements between the service the child is leaving and the service the child is entering including any communication arrangements if the child is missing or cannot be accounted for during the child's travel;
- (e) the procedure to be followed by the service if the service has identified that the child is missing or cannot be accounted for during the child's travel;
- (f) given the risks posed by the child's travel, the number of educators or other responsible adults that are appropriate to provide supervision;
- (g) the proposed route and destination, including any proximity to harm and hazards;
- (h) the process for entering and exiting—
  - (i) the service premises; and
  - (ii) the pick-up location or destination (as required);

- (i) the procedure to be followed by the service to ensure the child leaves the service premises in accordance with regulation 99(4)(b).
- (5) If, after conducting a risk assessment, a risk relating to a child's travel is identified, the approved provider must make any necessary updates to the safe arrival of children policies and procedures as soon as practicable.
- (6) The approved provider must keep a record of each risk assessment conducted under this regulation.

**Regulation 103 Premises, furniture, and equipment to be safe, clean and in good repair**

- (1) The approved provider of an education and care service must ensure that the education and care service premises and all equipment and furniture used in providing the education and care service are safe, clean and in good repair.

Penalty: \$2200.

**Regulation 105 Furniture, materials, and equipment**

The approved provider of an education and care service must ensure that each child being educated and cared for by the education and care service has access to sufficient furniture, materials, and developmentally appropriate equipment suitable for the education and care of that child.

Note—

A compliance direction may be issued for failure to comply with this regulation.

**Regulation 117A Placing a person in day-to-day charge**

For the purposes of the definition of a person in day-to-day charge in section 5(1) of the Law, a person is in day-to-day charge of an education and care service if—

- (a) the person is placed in day-to-day charge by the approved provider or a nominated supervisor of the education and care service; and
- (b) the person consents to the placement in writing.

**Regulation 118 Educational leader**

The approved provider of an education and care service must designate, in writing, a suitably qualified and experienced educator, co-ordinator or other individual as educational leader at the service to lead the development and implementation of educational programs in the service.

Note—

A compliance direction may be issued for failure to comply with this regulation.

**Regulation 126 Centre-based services—general educator qualifications**

- (1) The qualification requirements for educators at a centre-based service educating and caring for children preschool age or under are as follows—

- (a) at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and
- (b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.

**Regulation 147 Staff members**

The staff record must include the following information in relation to staff members—

- (a) the full name, address, and date of birth of the staff member;
- (b) evidence—
  - (i) of any relevant qualifications held by the staff member; or
  - (ii) if applicable, that the staff member is actively working towards that qualification as provided under regulation 10;
- (c) evidence of any approved training (including first aid training) completed by the staff member;
- (d) if the education and care service is located in a jurisdiction with a working with children law or a working with vulnerable people law, a record of the identifying number of the current check conducted under that law and the expiry date of that check, if applicable, unless paragraph (e) applies;
- (e) except in the case of New South Wales, Queensland, and Tasmania, if the staff member has provided proof of the staff member's current teacher registration under an education law of a participating jurisdiction, a record of the identifying number of the teacher registration and the expiry date of that registration;
- (f) in relation to Tasmania, a record of the identifying number of the staff member's current working with vulnerable people registration and the expiry date of that registration.

**Regulation 148 Educational leader**

The staff record must include the name of the person designated as the educational leader in accordance with regulation 118.

**Regulation 151 Record of educators working directly with children**

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information—

- (a) the name of each educator who works directly with children being educated and cared for by the service;
- (b) the hours that each educator works directly with children being educated and cared for by the service.

**Regulation 158 Children's attendance record to be kept by approved provider**

(1) The approved provider of an education and care service must ensure that a record of attendance is kept for the service that—

- (a) records the full name of each child attending the service; and
- (b) records the date and time each child arrives and departs; and
- (c) is signed by one of the following persons at the time that the child arrives and departs—

- (i) the person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
- (ii) a nominated supervisor or an educator.

**Regulation 162 Health information to be kept in enrolment record**

The health information to be kept in the enrolment record for each child enrolled at the education and care service is—

- (a) the name, address and telephone number of the child’s registered medical practitioner or medical service; and
- (b) if available, the child’s Medicare number; and
- (c) details of any—
  - (i) specific healthcare needs of the child, including any medical condition; and
  - (ii) allergies, including whether the child has been diagnosed as at risk of anaphylaxis; and
- (d) any medical management plan, anaphylaxis medical management plan or risk minimisation plan to be followed with respect to a specific healthcare need, medical condition or allergy referred to in paragraph (c); and
- (e) details of any dietary restrictions for the child; and
- (f) the immunisation status of the child; and
- (g) if the approved provider or a staff member or family day care educator has sighted a child health record for the child, a notation to that effect.

**Regulation 167 Record of service’s compliance**

(1) Subject to subregulations (2) and (3), the record of the service’s compliance must include the following information—

- (c) details of any compliance direction or compliance notice issued to the approved provider in respect of the service, including—
  - (i) the reason stated by the Regulatory Authority for issuing the direction or notice;
  - (ii) the steps specified in the direction or notice;
  - (iii) the date by which the steps specified must be taken.

**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: \$1100.

(2) Policies and procedures are required in relation to the following—

- (a) health and safety, including matters relating to—
  - (i) nutrition, food and beverages, dietary requirements; and
  - (ii) sun protection; and
  - (iii) water safety, including safety during any water-based activities; and
  - (iv) the administration of first aid; and
  - (v) sleep and rest for children, including the matters set out in regulation 84B;
- (b) incident, injury, trauma, and illness procedures complying with regulation 85;
- (c) dealing with infectious diseases, including procedures complying with regulation 88;
- (d) dealing with medical conditions in children, including the matters set out in regulation 90;

- (e) emergency and evacuation, including the matters set out in regulation 97;
- (f) delivery of children to, and collection of children from, education and care service premises, including procedures complying with regulation 99;
- (g) excursions, including procedures complying with regulations 100 to 102;
- (ga) if the service transports or arranges transportation of children other than as part of excursions, transportation including procedures complying with Division 7 of Part 4.2 of Chapter 4;
- (gb) the safe arrival of children who travel between an education and care service and any other education or early childhood service within the meaning of regulation 102AA, including the matters set out in regulation 102AAB;
- (h) providing a child safe environment, including matters relating to—
  - (i) the promotion of a culture of child safety and wellbeing within the service; and
  - (ii) the safe use of online environments at the service;
- (i) staffing, including—
  - (i) a code of conduct for staff members; and
  - (ii) determining the responsible person present at the service; and
  - (iii) the participation of volunteers and students on practicum placements;
- (j) interactions with children, including the matters set out in regulations 155 and 156;
- (k) enrolment and orientation;
- (l) governance and management of the service, including confidentiality of records;
- (m) the acceptance and refusal of authorisations;
- (n) payment of fees and provision of a statement of fees charged by the education and care service;
- (o) dealing with complaints, including matters relating to—
  - (i) the provision of a complaint handling system at the service that is child focused; and
  - (ii) the management of a complaint that alleges a child is exhibiting harmful sexual behaviours.

Note—

A compliance direction may be issued for failure to comply with subregulation (1).

**Regulation 170 Policies and procedures to be followed**

- (1) 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: \$1100.

- (2) The approved provider of a family day care service must take reasonable steps to ensure that nominated supervisors and staff members of, and family day care educators engaged by or registered with, the service follow the policies and procedures required under regulations 168 and 169.

Penalty: \$1100.

Note—

A compliance direction may be issued for failure to comply with subregulation (1) or (2).

**Regulation 171 Policies and procedures to be kept available**

(1) The approved provider of an education and care service must ensure that copies of the current policies and procedures required under regulation 168 and, in the case of a family day care service, regulation 169 are readily accessible to nominated supervisors and staff members of, volunteers at, and family day care educators engaged by or registered with, the service.

Penalty: \$1100.

**Regulation 177 Prescribed enrolment and other documents to be kept by approved provider**

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider—
- (a) the documentation of child assessments or evaluations for delivery of the educational program as set out in regulation 74;
  - (b) an incident, injury, trauma, and illness record as set out in regulation 87;
  - (c) a medication record as set out in regulation 92;
  - (d) a record of assessments of family day care residences and approved family day care venues conducted under regulation 116;
  - (e) in the case of a centre-based service, a staff record as set out in regulation 145;
  - (f) a record of volunteers and students as set out in regulation 149;
  - (g) the records of the responsible person at the service as set out in regulation 150;
  - (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151;
  - (i) a record of access to early childhood teachers as set out in regulation 152;
  - (j) in the case of a family day care service, a record of staff engaged or employed by the service kept under regulation 154;
  - (k) a children's attendance records as set out in regulation 158;
  - (l) child enrolment records as set out in regulation 160;
  - (m) a record of the service's compliance with the Law as set out in regulation 167;
  - (n) a record of each nominated supervisor and any person in day-to-day charge of the education and care service under section 162 of the Law;
  - (o) in the case of a centre-based service, a record of children embarking a means of transport at the education and care service premises as set out in regulation 102E(4)(c);
  - (p) in the case of a centre-based service, a record of children disembarking a means of transport at the education and care service premises as set out in regulation 102F(4)(d).
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: \$2200.

- (3) Subject to Subdivision 4, the approved provider of the education and care service must ensure that—
- (a) subject to subregulations (4) and (4A), the documents referred to in subregulation (1) in relation to a child enrolled at the service are made available to a parent of the child on request;
  - (b) the record of compliance referred to in subregulation (1)(m) is able to be accessed on request by any person.

Penalty: \$2200.

- (4) If a parent's access to information of the kind in the documents referred to in subregulation (1) is limited by an order of a court, the approved provider must refer to the court order in relation to the release of information concerning the child to that parent.
- (4A) Before disclosing to a parent of a child enrolled at the service any personal information relating to a person specified in subregulation (4B) that is contained in a document referred to in subregulation (1), the approved provider must obtain the written consent of the person to whom the personal information relates to the disclosure of that personal information.
- (4B) The following persons are specified—
- (a) a parent of a child enrolled at the service, if that person is not the parent making the request under subregulation (3)(a);
  - (b) a person who is required to be notified of an emergency involving a child enrolled at the service if a parent of the child cannot be immediately contacted;
  - (c) an authorised nominee of a child enrolled at the service;
  - (d) a person who is authorised to consent to medical treatment of, or to authorise administration of medication to, a child enrolled at the service;
  - (e) a person who is authorised to authorise an educator to take a child enrolled at the service outside the service premises;
  - (f) a person who is authorised to authorise the service to transport a child enrolled at the service or arrange transportation of a child enrolled at the service.
- (4C) A person who has given their written consent under subregulation (4A) may withdraw their consent in writing at any time before the personal information is disclosed.
- (5) An approved provider of a family day care service is not required to keep a document set out in subregulation (1) if an equivalent record is kept by a family day care educator under regulation 178.
- (6) In this regulation—personal information has the same meaning as it has in the Privacy Act 1988 of the Commonwealth.

Note—

A compliance direction may be issued for failure to comply with subregulation (2) or (3).

**Regulation 185 Law and regulations to be available**

The approved provider of an education and care service must ensure that a copy of the Law and these Regulations is accessible at the education and care service premises at all times for use by nominated supervisors, staff members, volunteers, parents of children enrolled at the service and any person seeking to make use of the service.

Note—

A compliance direction may be issued for failure to comply with this regulation.

**Regulation 260 Educator to child ratio—children over preschool age—centre-based services**

- (1) This regulation applies in place of regulation 123(1)(d).
- (2) The educator to child ratio for children over preschool age at a centre-based service is 1 educator to 11 children.

**Regulation 261 General qualifications for educators—children over preschool age—centre based services**

- (1) For the purposes of regulation 126(2), the qualification requirement for educators at a centre-based service educating and caring for children over preschool age is at least 1 qualified educator for every 33 children.

**Regulation 262 Required qualifications to be a qualified educator for children over preschool age**

- (1) The first educator required to meet the qualified educator to child ratio for children over preschool age must—
  - (a) hold a qualification that is published under regulation 137(2) in the list of approved qualifications for the first qualified educator working with children over preschool age for the Australian Capital Territory; or
  - (b) comply with the following—
    - (i) be enrolled in a course for a qualification that is included in the list referred to in paragraph (a); and
    - (ii) be able to demonstrate that he or she is continuing to study for that qualification; and
    - (iii) be approved by the Regulatory Authority to work as a qualified educator for children over preschool age.
- (2) All other educators required to meet the qualified educator to child ratio must—
  - (a) hold any qualification that is included in the list referred to in subregulation (1)(a); or
  - (b) hold a qualification that is published under regulation 137(2) in the list of approved qualifications for the second and subsequent qualified educators working with children over preschool age for the Australian Capital Territory.
- (3) The Regulatory Authority may, on application, grant an approval for the purposes of subregulation (1).

**Compliance History**

22. In determining appropriate compliance action, I have considered the compliance history of the Provider's approved services in the ACT relating to this Decision.

## Decision

23. Considering the evidence obtained, the Provider's compliance history in the ACT, and the objectives and guiding principles of the Law, I have determined that issuing a Compliance Notice would be appropriate and in the best interests of children.
24. The Authority is empowered to issue a compliance notice under section 177 of the Law.

### 177 – Compliance notices

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

Penalty:       \$6 000, in the case of an individual  
                  \$30 000, in any other case.

25. The compliance notice is Attachment A to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.
26. You must produce evidence of the steps required by the times indicated for each step within the Notice at Attachment A.

## Rights of Review

27. A decision to issue a compliance notice and a decision to impose a condition on a service approval are reviewable decisions as defined in Section 190 of the Law. Under section 191 of the Law, you may apply for an internal review of these decisions or either of them. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
28. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from the ACECQA website.

## Legislation

29. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>
30. The National Law is made up of an Act and Regulations which can be viewed at: <http://www.acecqa.gov.au/national-law>, and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

31. Should you have any questions about this Decision, the Condition, or the Compliance Notice please contact me at [delphine.coutin@act.gov.au](mailto:delphine.coutin@act.gov.au)

Yours Sincerely



Delphine Coutin  
Assistant Director, Audit and Risk Management  
Education and Care Regulation and Support  
ACT Education Directorate

1 August 2024