





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

13. Excerpts from Witness C's evidence include:

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

14. It is noted that, while there were sufficient staff to meet ratios in the outdoor space, both educator and trainee appear not to be working directly with children as required by *Regulation 13*.

**Law**

15. Evidence gathered via the investigation engages the following sections of the *Law* and *Regulation*:

**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.

### **Section 169(1) of the Law – Offence relating to staffing arrangements**

The Approved Provider of an education and care service must ensure that, whenever children area being educated and cared for by the Service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual  
\$50 000, in any other case.

### **Regulation 122 –Educators must be working directly with children to be included in ratios**

An educator cannot be included in calculating the educator to child ratio of a centre-based service unless the educator is working directly with children at the service.

### **Regulation 13 – Meaning of *working directly with children***

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

Is physically present with the children; and

Is directly engaged in providing education and care to the children.

### Contravention Engaged by Allegation

16. Evidence gathered relevant to the Allegation include documentation provided under 215 Notice together with witness statements.

17. Relevant evidence gathered appear to support the following contraventions of the *Law*:

- a) On 16 October 2020, the Provider failed to ensure the adequate supervision of children being educated and cared for by the Service, resulting in three children being able to climb over a fence and leave the Service premises unnoticed, in contravention of section 165(1) of the *Law*; and
- b) On the 16 October 2020, the Provider, by failing to ensure adequate supervision of children, failed to ensure every reasonable precaution was taken to protect children being educated and cared for by the service from harm and hazard likely to cause injury, in contravention of section 167(1) of the *Law*; and
- c) On the 16 October 2020, due to educators performing laundry tasks and not directly working with children to be counted in ratio at all times, the Provider failed to ensure that the relevant numbers of educators educating and caring for children was no less than the number prescribed for the purpose, in contravention of Section 169(1) of the *Law*.

### **Right of response**

18. 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.

19. Accompanying this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Refer Attachment C.

20. Please direct your written submission via email to [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au) or by post to Children's Education and Care Assurance, Attention Senior Investigator Brian Cropper, GPO Box 158, Canberra ACT 2601.

**Caution**

21. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness.
22. 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*. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
23. Please be aware that it is an offence under section 295 the *Law* to provide the Authority with false or misleading information or documents.
24. 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>.
25. The *Law* and *Regulations* can be viewed at: <http://www.acecqa.gov.au/national-law>, and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653q>
26. Should you have any questions about this Show Cause Notice please contact Brian Cropper on telephone (02) 620 71104 or email [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au)

Yours Sincerely



Clare Brookes  
Senior Director  
Children's Education and Care Assurance  
Early Childhood Policy and regulation  
ACT Education Directorate.

3 January 2021