

precautions to protect children from harm and hazard likely to cause injury, an offence under section 167(1) of the *Law*.

Allegation One – Failure to Ensure Adequate Supervision

8. It is alleged that, on 6 October 2020 at approximately 8:57am, the Provider failed to ensure that children being educated and cared for by the Service were adequately supervised at all times, resulting in a child, ██████████ (11mths), falling from a highchair to the floor, contravening section 165(1) of the *Law*, engaging a contravention of section 167(1) of the *Law*.

Allegation Two – Failure to Take Reasonable Precautions to Protect from Harm or Hazards

9. It is further alleged that on, 6 October 2020 at approximately 8:57am, the Provider failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the service from harm and any form of hazard likely to cause injury, in that a child, ██████████ (11mths), was not adequately secured in a highchair and fell to the floor, contravening section 167(1) of the *Law*.

Legislative Provisions Relevant to Allegations One and Two

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.

Evidence Relevant to Allegations One and Two

10. The ACECQA NQA ITS data base indicates you are the sole Provider Person with Management and Control of the Service, and that ██████████ was the nominated supervisor of the Service at the relevant time, having commenced in February 2015. Refer Attachment B.

11. On 8 October 2020, because of the Authority responding to the Notification received 6 October 2020, the Provider submitted requested additional information inclusive of Closed-Circuit Television footage (CCTV). Refer Attachment C.
12. Further relevant documentation was obtained from the Provider on 30 October 2020, pursuant to a notice allowable under section 215 of the *Law* (215 Notice) including:
 - a) Incident report [REDACTED] (Refer Attachment D)
 - b) Child attendance (Refer Attachment D1.)
 - c) Responsible Person record (Refer Attachment D2.)
 - d) Relevant policies (Refer Attachment E)
13. Analysis of information, including CCTV footage, supplied by the Provider identifies that, at about 8:57am on 6 October 2020, a child, [REDACTED] (11mths) was seated in a highchair, without appropriate restraint, then stood up in the highchair and fell to the floor.
14. One educator standing at the kitchen bench had her back to [REDACTED] and other children in highchairs and was preparing morning tea. Another nursery educator was changing a nappy in the nappy change room. [REDACTED] fell to the tile floor initially unnoticed by educators, being picked up shortly afterward by an educator, without proper examination or first aid.
15. Information further indicates that there was then a delay of approximately 30 minutes for the Nominated Supervisor to be advised of the incident and then a further hour for the parent of the child to be contacted and advised of the incident.
16. Evidence gathered during the investigation also indicates the Provider was aware that several highchairs used in the nursery rooms did not have an appropriately fitted harness or restraint, to adequately secure children in the seat and prevent injury.
17. During the investigation, the Authority obtained statements from various witnesses with relevant excerpts included below.
18. Relevant excerpts from statement of Witness A are as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. Excerpts from Witness B's evidence include:

[REDACTED]

Previous Compliance History

22. Please be aware that, when considering any appropriate compliance action, the Authority considers the previous compliance history of a Provider and Service.

Proposed Compliance Action

23. The Authority is proposing compliance action under Parts 3 or Part 7 of the *Law*, should the Authority find that any or all of Allegations One and Two are substantiated on the balance of probabilities. Potential compliance actions include:
- a) Amendment of the Service Approval allowable under section 55 of the *Law* to impose an appropriate condition;
 - b) Amendment of the Provider Approval allowable under section 23 of the *Law* to impose a new condition;
 - c) A Compliance Notice allowable under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*;

Right of response

24. You have a right to respond to the allegation set out in this notice. You may, within 21 days of receiving this notice, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
25. 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 F.
26. Please direct your written submission via email to 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

27. 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*.
28. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
29. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.

30. 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>.

31. 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>

32. 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

Yours Sincerely



Jo Williams
Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

22 February 2021