

Ms [REDACTED]
Nominated Supervisor
Lavender Lane Child Care Service

Email: [REDACTED]

Dear Ms [REDACTED],

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. 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 (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
2. Authorised Officers are currently investigating suspected offences regarding the operation of Lavender Lane Child Care Service SE-00009802 (the Service) operated by G8 Education Limited PR-00000898 (the Provider)
3. The suspected offences relate to alleged failure to ensure adequate supervision within the outdoor space at the Service resulting in a child falling asleep for some time and sustaining a sunburn.
4. 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.
5. Authorised Officers have now finished obtaining evidence (unless further lines of enquiry emerge) and the Authority has determined there is sufficient evidence to support a case to answer regarding the suspected offences under the *Law*.
6. 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 as Nominated Supervisor at the Service at the time of the alleged incident.
7. Detailed instructions of how to respond appear at the end of this Notice.
8. If substantiated, the allegations may constitute offences under sections 165 and 167 of the *Law* and Regulation (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated, on the balance of probabilities, it will need to consider whether compliance action is required.
9. Where any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action with the focus being on ensuring future

compliance and improved outcomes for children, rather than punishment. Potential compliance actions that may be considered in this instance appear at the end of this Notice.

Grounds for issuing Show Cause Notice

10. The evidence obtained during the investigation to date supports offences under the *Law* relating to the following areas:
 - a. Supervision.
 - b. Protection of children from harms and hazards.

Background

11. On 23 November 2022, the Authority received a Notification of a complaint from the Provider alleging a child had been left asleep in the play space on 18 November 2022.
12. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at Service and a decision was made to investigate suspected offences under section 165(2) and 167(2) of the *Law*.

Allegation

13. It is alleged on 18 November 2022, you, the Nominated Supervisor failed to ensure that all children being educated and cared for by the service were adequately supervised. , A child, believed to be [REDACTED] (3:8) was left unsupervised, unchecked, and asleep in the outdoor space of the service for a lengthy period of time, contravening s165(2) of the *Law*, and raising a further contravention of s167(2) of said *Law*.

Legislation Relevant to Allegation

Section 165(2) of the *Law* - Offence to inadequately supervise children.

A nominated Supervisor 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

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 care 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

14. Documentation obtained from the Provider during the investigation includes the following:

- a. Working Directly with Children records (WDWC) for 18 November 2022;
 - b. Child attendance records for 18 November 2022;
 - c. Policy and procedures;
 - d. Induction record for Ms [REDACTED]
 - e. CCTV video.
15. Working Directly with Children Records (WDWC) and Child Attendance records support that [REDACTED] (3:8) was being educated and cared for at the Service. Refer to Attachment A.
16. Ratio analysis was carried out for 18 November 2023 and do not indicate any contravention of educator to child prescribed ratio requirements. Refer Attachment B.
17. Sleep and Rest and Supervision policies furnished by the Provider, indicate the following:
“If a child falls asleep in an environment other than the approved bedding they will be promptly moved to the recommended cot, mattress, designated sleep area”. (p5. Sleep and Rest Policy), and
“being alert to, and aware of, risks and hazards and the potential for incidents and injury throughout the centre and not just within their own immediate area. Using supervision skills to reduce or prevent incident or injury to children and adults”. (p6. Supervision policy).
Refer Attachment C for relevant policies.
18. CCTV video footage of the indicate that [REDACTED] attended the boundary fence about 4:14:13 and after spinning around a pole, disappears from CCTV view until attended to at 5:12:40 by his parent. Refer to photos at Attachment D. (CCTV Video can be supplied upon request).
19. Records held by the Authority indicate that you were the nominated supervisor of the Service on 18 November 2022. Refer to Attachment E.
20. During the investigation, the Authority obtained numerous witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Please note that most witness statements were obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
21. Relevant extract from complainant statement include:
- a) [REDACTED]

26. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
27. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge.
28. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

Section 182(3) - Grounds for issuing a prohibition notice

The Regulatory Authority may give a prohibition notice to a person to –

- (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
- (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Right of response

29. As mentioned previously, this letter is your 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.
30. At Attachment F 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 brian.cropper@act.gov.au or by post to:
Children’s Education and Care Assurance
Attention Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

31. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority’s investigation are included in the interests of procedural fairness. The statements taken during the investigation 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 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 employed 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 Senior Investigator Brian Cropper, at email brian.cropper@act.gov.au.

Yours sincerely



Jo Williams
Director - Regulatory Operations
Children's Education and Care Assurance
Education and Care Regulation and Support

6 June 2023