

Mr [REDACTED]
Company Director
Abacus 49 Pty Ltd

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to Issue Compliance Notice

1. On 5 August 2024 Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, conducted an unannounced compliance audit at Genius Gungahlin SE-40001554 (the Service), operated by Abacus 49 Pty Ltd PR--40015589 (the Provider).
2. Authorised Officers gathered evidence using monitoring powers. This included documentation, photos, observations, and conversations held with staff. The evidence supports contraventions of the *Law* and *Regulations*. Further information follows and each contravention has been set out within this decision.
3. To this end, I am satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act 2010*¹ (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*).
4. Electronic links to the *Law* and the *Regulations* are provided for your convenience at the end of this notice.

Background Facts

5. On 5 August 2024, Authorised Officers (AOs) entered the Service to conduct an unannounced compliance audit. The audit report has been finalised and a decision to issue a Compliance Notice was made by the Authority on 26 August 2024.

Grounds

6. The audit identified an offence relating Section 167 (1) of the *Law* protection of children from harm and hazards.
 - a. The outdoor environment upstairs was in poor condition and deemed unsafe for children to be in.
 - b. A shelf was pushed up against the fence in the upstairs playground, providing a foothold for a child to climb over. It was noted that the playground was not in use at the time of the audit.

¹ Adopted in the ACT by the *Education and Care Services National Law (ACT) Act 2011*.

- c. Both sets of emergency stairs were blocked by resources. The exit door in the preschool room was blocked by a broken screen.
 - d. A contravention of regulation 103 (1) was identified as bathroom checklists were not completed consistently, cupboards containing chemicals were not all locked, nappy change mats across the service had rips and tears.
 - e. Furthermore, it was identified that a cot in nursery 4 has a broken wheel and a mattress leaning against a cot.
7. The audit identified that prescribed information was not displayed , breaching Section 172 of the *Law* and contravening regulation 173.
 - a. The name and position of the responsible person at any given time was not displayed.
 - b. The name of only one of the Nominated Supervisors was displayed at the service in the entrance.
 - c. The name of the person to contact at the service for complaints was not displayed.
 - d. Contact details displayed for the ACT Regulatory Authority were inaccurate.
8. Offence to fail to notify certain information to the Regulatory Authority was identified at the time of the audit which is a breach of Section 174 (2) of the *Law*. The nominated supervisor stated that emergency services attended the service on 24 July 2024 for a fire. The incident has not been reported to the Authority.
9. The educational program in Nursery 1 was not displayed in a location that is accessible to parents, contravening regulation 75.
10. At the time of the audit first aid kits were not adequately stocked. The first aid kits were not easily identified and were not in an accessible location contravening regulation 89 (1).
11. At the time of the audit no risk minimisation plan for [REDACTED] was in place contravening regulation 90 (1).
12. At the time of the audit, the risk assessment for an excursion to the ACT Rural fire service Gungahlin was missing prescribed information contravening regulation 101 (2) (e).
13. Contravention of regulations 73 and 105 were identified at the time of the audit.
 - a. In all rooms books were ripped with missing pages making them unreadable.
 - b. The Toddler room had minimal resources available. The resources available were dirty and in poor condition. The resources were not developmentally appropriate for those children. The children were disengaged, running aimlessly around the room, and jumping on the stretcher beds. Shelves were empty in the room.
14. At the time of the audit, the laundry door was unlocked and open, potentially making it accessible to children, contravening regulation 106 (2). The door handle is of a height that a child could reach and open the door if left unlocked.
15. At the time of the audit, educators were disengaged from the children, they addressed the children using repetitive sentence commands, continually speaking to children from across the rooms, contravening regulations 155 and 156.

16. At the time of the audit medical management plan for a child with an egg allergy was not kept on the enrolment record, contravening Regulation 162 (d).

Law and Regulations

Legislative Provisions Relevant to Compliance Audit

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 172 (1) 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 174 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.

Regulation 73 Educational program

- (1) This Part applies in relation to the program (the educational program) that is required to be delivered under section 168 of the Law to a child being educated and cared for by an education and care service.
- (2) An educational program is to contribute to the following outcomes for each child—
 - (a) the child will have a strong sense of identity;
 - (b) the child will be connected with and contribute to his or her world;
 - (c) the child will have a strong sense of wellbeing;
 - (d) the child will be a confident and involved learner;
 - (e) the child will be an effective communicator.

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 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—
 - (a) an appropriate number of first aid kits must be kept having regard to the number of children being educated and cared for by the service; and
 - (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.

Regulation 101 Conduct of risk assessment for excursion

- (2) Without limiting subregulation (1), a risk assessment must consider—
- (e) the number of adults and children involved in the excursion

Regulation 103(1) 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: \$2000.

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.

Regulation 106 Laundry and hygiene facilities

(2) The approved provider of the service must ensure that laundry and hygienic facilities are located and maintained in a way that does not pose a risk to children.

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

Regulation 155 Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that—

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Regulation 156 Relationships in groups

(1) The approved provider of an education and care service must take reasonable steps to ensure that the service provides children being educated and cared for by the service with opportunities to interact and develop respectful and positive relationships with each other and with staff members of, and volunteers at, the service.

(2) For the purposes of subregulation (1), the approved provider must have regard to the size and the composition of the groups in which children are being educated and cared for by the service.

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

Regulation 162 Health information to be kept in enrolment record

- (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).

Regulation 173 Prescribed information to be displayed—education and care service other than a family day care service

- (1) For the purposes of section 172(1) of the Law, the following information is prescribed in respect of the matters in paragraphs (a) to (e) of that section—
- (c) the name of each nominated supervisor;
- (2) For the purposes of section 172(2)(f) of the Law, the following matters and information are prescribed—
- (b) the name and telephone number of the person at the education and care service to whom complaints may be addressed;
 - (c) in the case of a centre-based service, the name and position of the responsible person in charge of the education and care service at any given time.
 - (e) the contact details of the Regulatory Authority.

Compliance History

17. In determining appropriate compliance action, I have considered the compliance history of the Service, which has had statutory compliance actions taken prior to this Decision.

Decision

18. Considering the evidence obtained, the Service’s compliance history, 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.
19. 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: \$6000, in the case of an individual
\$30 000, in any other case

21. The compliance notice is Attachment A to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions.
22. You must produce evidence of the steps required by **the time indicated within the Notice at Attachment A**.
20. The Authority will also be maintaining its auditing of the Service to ensure compliance is appropriately monitored, to ensure the health, safety and wellbeing of children being educated and cared for.

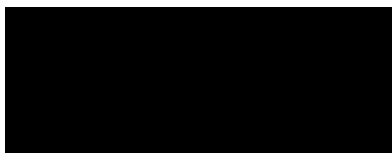
Rights of Review

21. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. 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).
22. 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

25. 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>.
26. 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>
27. Should you have any questions about this Compliance Notice please contact me at delphine.coutin@act.gov.au

Yours Sincerely



Delphine Coutin
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

17 September 2024