



[REDACTED]
Nominated Supervisor
Edge Early Learning Charnwood
Email: [REDACTED]

Dear [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 may be 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 (the Law)*. One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. Authorised Officers are currently investigating suspected offences of the *Law* relating to the operation of Edge Early Learning Charnwood SE-40014603 (the Service) operated by Edge Early Learning ACT Pty Ltd PR-40029018 (the Provider).
3. The suspected offences relate to alleged inadequate supervision of children within Studio 7 on 21 September 2022 resulting in a serious injury of a child, known to be [REDACTED] (3 years), going unnoticed for forty minutes.
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 from other sources (unless further lines of enquiry emerge) and the Authority has determined there is sufficient evidence to support a case to answer regarding suspected offense under the *Law*.
6. However, the Authority’s investigation is not complete until, you, as the Nominated Supervisor, have had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the allegation/s may constitute offences under sections 165 and 167 of the *Law* (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
8. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Details relating to potential compliance actions appear at the end of this Notice.

Background

9. On 21 September 2022, the Authority received a Notification advising a child was located under a table with a cut and blood on their head. Refer Attachment A.
10. On 28 September 2022, the Provider furnished the following internal investigation documents, prescribed records and information at the request of the Authority on 23 September 2022:
 - a) Witness statements
 - b) Child attendance records and Working Directly with Children record;
 - c) Policy, procedures and Training packages
 - d) CCTV Video and Educator Warnings
11. 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 sections 165 and 167 of the *Law*.
12. On 2 November 2022, as part of the investigation, the Authority obtained information from the Provider, exercising powers under section 215 of the *Law*, including the following documents: Staff details and Induction records; and Sleep and rest policies.

Allegation – Sections 165 and 167 of the Law

13. It is alleged that on 21 September 2022, you, as the Nominated Supervisor failed to ensure that all children were adequately supervised at all times, contributing to a child, believed to be ■■■ ■■■■ suffering an unwitnessed significant head injury and was not assisted or noticed by educators for approximately 40 minutes, in contravening section 165(2) of the *Law* and giving rise to contravention of section 167(2) of said *Law*.

Legislation Relevant to Allegation

14. The following provisions of the *Law* and *Regulations* are relevant to the 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

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

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 –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

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 123 (1) and (2) –Educator to child ratio-centre – based service

(1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios—

- (a) for children from birth to 24 months of age—1 educator to 4 children;
- (a) for children over 24 months and less than 36 months of age—1 educator to 5 children;
- (b) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;
- (c) for children over preschool age, 1 educator to 15 children.

(2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

Evidence Relevant to the Allegation

- 15. Documentation received from the Provider upon request of the Authority included working directly with children records (WDWC) and children’s attendance records for 21 September 2022.
- 16. These documents indicate three educators, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were signed into Studio 7 at the time of [REDACTED] injury, with [REDACTED] recorded as leaving at 3.50pm. WDWC indicate a headcount was conducted at the time of [REDACTED] leaving, however, should this have been adequately undertaken, an injured [REDACTED] would have likely been located minutes after the incident. Refer to Attachment B.
- 17. Ratio analysis was carried out utilising WDWC and child attendance records indicate that between 3.45 pm and 4pm there were two educators for twenty-four children. Refer Attachment C.
- 18. CCTV video furnished by the Provider, upon request, depicts educators, [REDACTED] and [REDACTED] undertaking tasks other than engaging directly with children at the time of [REDACTED] injury. Furthermore, it is noted a further child identified as sleeping in the middle of the room, was also not checked. The following relevant timeline was constructed from that video: (Due to size, CCTV can be produced upon request)
 - a) 15:40 Educators [REDACTED] [REDACTED] [REDACTED] and [REDACTED] in room with educator [REDACTED] collecting rubbish.
 - b) 15:41 Educator, [REDACTED] [REDACTED] commenced paperwork.

- c) 15:42 Child, believed to be ██████ commences sleeping on mat laying on a pillow. Appears to sleep until 16:28.
- d) 15:43 Child, ██████ climbs low shelf, sits in pram, climbs out and climbs back in.
- e) 15:44 ██████ falls from pram striking head on table edge, crawling under table with legs and feet protruding. Her feet splayed outward and with minimal movement until located at 16:24.
- f) 15:47 Educator ██████ leaves the room with rubbish. Two educators, ██████
- g) ██████ and ██████ remain in the room with twenty-four children until about 4pm when two children leave.
- h) 15:52 Educator ██████ ceases paperwork, speaks with educator, ██████ and ██████ and commences to tidy the room, infrequently engaging with children
- i) 15:56 Educator, ██████ enters the room momentarily and leaves, presumably for her break.
- j) 16:24 Educator ██████ observed ██████ legs protruding from under the table while returning property to a cupboard.
- k) 16:24 Educator ██████ drags ██████ by the legs from under the table and picks her up and carries her to educator ██████ where first aid given.
- l) 16:24 Educator ██████ gives first aid to ██████
- m) 16:27 Educator ██████ returns to cleaning infrequently engaging with children.
- n) 16:28 Child, believed to be ██████ awake from sleep.
- o) 16:32 Educator ██████ engages children with an Ipad.

19. The Incident, Injury, trauma and illness report furnished by Provider indicate that injured child, ██████ suffered a laceration and bleed injury that a reasonable person would consider needed urgent medical attention with the wound possibly requiring stitches or glue. Communication with parents indicate ██████ suffered a deep laceration and mild concussion, attending the hospital for the wound to be glued and a follow up with a general practitioner. Refer to Attachment D.

20. Internal investigation documents furnished by the Provider identify the following:

- a) Educators being unaware of the injury to ██████ and being unnoticed for 40 minutes.
- b) Educators given warnings and further training undertaken by the three educators in the room at the time of the injury.

Refer relevant documents at Attachment E.

21. The Authority acknowledges the Provider's staff inductions undertaken at the beginning of August 2022 on commencement of the Service. Refer Attachment F.

22. Records from the National Quality Authority ITS database indicate that you were the nominated supervisor at the time, having commenced in that role on 01/08/2022. Refer Attachment G.

23. During the investigation, the Authority obtained witness statements with relevant extracts appearing below. Personal information has been redacted where appropriate. Please note that

b) [Redacted text block]

n) [Redacted text block]

Contraventions Supported

26. Evidence gathered appears to support contraventions of sections 165(2) and 167(2) of the Law.

27. The Authority's view is that adequate supervision is a reasonable precaution to take to protect children from harm and from hazards likely to cause injury. Accordingly, a contravention of section 165(2) results in substantiation of an offence under section 167(2) of the Law.

Potential Compliance Action

28. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
- a. Non-statutory action such as a formal caution letter;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from acting in a role as Nominated Supervisor.
29. Relevant legislation for enforceable undertakings and partial prohibition appears below.
30. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
31. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. 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. 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 179A of the Law - Enforceable undertakings

- (1) This section applies—
 - (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
 - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain

actions, or refrain from taking certain actions in relation to an education and care service.

- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

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

- (3) 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

32. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. 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.
33. At Attachment H 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 Authorised Officer, Brian Cropper at 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

34. 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*.
35. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
36. 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.

37. The *Law* applies to you as a nominated supervisor and to any service you are engaged 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>.
38. 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>
39. Should you have any questions about this Show Cause Notice please contact Authorised Officer Brian Cropper via email brian.cropper@act.gov.au

Yours sincerely



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

14 February 2023.