

Ms [REDACTED]  
Committee Chair  
CSIROCARE Black Mountain Inc  
RE: CSIROCARE Black Mountain Early Childhood Centre

Email: [REDACTED]

Dear Ms [REDACTED]

### Decision to issue Administrative Action

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into a Notification of Complaint (NOT-40495626) alleging that the *Education and Care Services National Law (ACT) (the Law)* was contravened at CSIROCARE Black Mountain Early Childhood Centre SE-00009770 (the Service) operated by CSIROCARE Black Mountain Inc PR-00005826 (the Provider).
2. The complaint alleged the Provider failed to adequately supervise children at all times and subsequently, failed to ensure every reasonable precaution was taken to protect children from harm and hazard likely to cause injury, resulting in the child being repeatedly targeted and injured by a peer between September and December 2020.
3. Web addresses to the *Law* and the *Education and Care Services National Regulations 2011 (the Regulations)* are provided for your convenience at the end of this letter.

### Facts

4. On 8 December 2020, the Authority received a complaint alleging a child, identified as [REDACTED] was being targeted and repeatedly injured by a peer at the Service.
5. On 14 December 2020, the Authority received Notification (NOT-40495626) of complaint from the Provider. Refer Attachment A.
6. On 15 December 2020 the Authority requested further documents and information from the Provider, which was provided on 18 December 2020. Additional information consisted of incident and injury records, meeting minutes and other communications, inclusion and behavior support plans and strategies.
7. Further, additional information also included a document titled 'copies of email communications with [REDACTED] parents'. This email dated the 24 September 2020, alleged failures of the Provider to protect the complainant's daughter from behaviors of a peer resulting in injury. Refer email dated 24 September 2020 at Attachment B.

### Law

#### **Section 165 of the Law - Offence to inadequately supervise children**

- (1) 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 of the Law – Offence relating to protection of children from harm and hazards**

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from hazard likely to cause injury.

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

\$50 000, in any other case.

### **Section 174 of the Law – Offence of failing to notify certain information to 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—

(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;

Penalty: \$4000, in the case of an individual.

\$20 000, in any other case.

### **Reasons**

8. Upon considering all evidence gathered for assessment, inclusive of Provider requested information, the Authority is not satisfied, on the balance of probabilities, that there is sufficient evidence to either substantiate or raise reasonable suspicion, of an offence under sections 165 or 167 of the *Law* in this instance by any relevant party.
9. However, the Authority is satisfied that a complaint received by the Provider on 24 September 2020 from [REDACTED] mother, in relation to the health safety and wellbeing of her daughter, was not notified to the Authority in contravention of section 174 (2)(b)(ii) of said *Law*.
10. In deciding if compliance action should be taken, the Authority has considered all relevant information supplied by the Provider in regard to the Provider's management of the parent's complaint.

### **Decision**

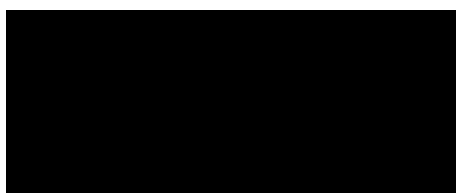
11. In consideration of all relevant information, the Authority has determined not to initiate statutory compliance action in regard to the substantiated offence of section 174(2) of the *Law*.
12. However, the Authority requests the Provider to submit to the Authority evidence that demonstrate strategies implemented to ensure notification of complaints and incidents are made in compliance with reporting requirements under the *Law*.
13. This evidence should be submitted to the Authority by close of business 14 days from the date of receipt of this letter. Information can be sent by email to [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au), or by post to:

Brian Cropper, Senior Investigator  
Children's Education and Care Assurance  
PO Box 158,  
CANBERRA ACT 2601

14. The *Law* applies to you as a Provider engaged within the early education and care sector.
15. 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>.

16. 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>
17. This Decision will be recorded on your Service file and may be considered in any future applications for approvals, amendments or waivers. It may also be considered in determining the action to be taken, should further breaches of the *Law* or *Regulations* be found.
18. If you have any queries regarding this Decision, please contact Brian Cropper on (02) 6207 1104 or alternatively at [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au).

Yours sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Early Childhood Policy and Regulation  
ACT Education Directorate

15 January 2021