



Ms [REDACTED]
Person with Management or Control
Caerus Early Learning Pty Ltd
T/A Coombs Early Learning
[REDACTED]

Email: [REDACTED]
cc: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Compliance Notice

1. As you may already be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently undertook an assessment of a notification alleging safety, health and wellbeing of children was compromised at Coombs Early Learning - SE-40010858 (the Service), operated by Caerus Early Learning Pty Ltd - PR-40013119 (the Provider).
2. 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).
3. Web addresses for the Law and the Regulations are provided for your convenience at the end of this notice.

Background Facts

4. On 8 April 2022, the Authority received a notification from the Provider advising that children were swinging, under the supervision of an educator. The educator had momentarily turned her attention to another child when a child (one year 11 months) fell from the swing, resulting in a fractured leg.
5. On 19 April 2022, the matter was discussed by CECA's triage committee. The committee agreed that although the swing appeared appropriate for the age group and was located above soft fall, information submitted indicated that the number of children being allowed to engage on swing at same time may have contributed to incident. The committee determined to seek further information.

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

6. On 21 April 2022, the Authority emailed the service to request further information in order to further inform the assessment. The Authority sought to confirm the number of children on the swing at the time of the incident and the ages of the children involved. As well as a copy of the risk assessment in place on the date of the incident and any reviewed risk assessments.
7. On 26 April 2022, the triage committee reconvened to assess and consider the additional information provided. The information identified that five children were on the swing at the time of the incident. The committee determined the risk assessment for the use of the swing was insufficient in the circumstances. The risk assessment lacked consideration of the number of children, their ages and the playground equipment's user guidelines and load capacity. The committee also noted that the playground equipment did not appear to have been professionally installed.

Law and Regulation

8. On its face, such evidence supported the following contraventions of the Law, related to **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.

Obligations upon Regulatory Authority

9. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely:

"to ensure the safety, health and wellbeing of children attending education and care services".
10. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:

(c) to monitor and enforce compliance with this law;
(d) to receive and investigate complaints arising under this law.
11. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law*

authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.

12. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
13. The *Law* is predominantly a protective law and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.
14. 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: \$6 000, in the case of an individual
\$30 000, in any other case.

Decision

15. Having reviewed the evidence I am satisfied that the Provider did not ensure that every reasonable precaution was taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury. This resulted in a child falling from a swing and sustaining a serious injury.
16. Considering the evidence obtained in the enquiry, and the objectives and guiding principles, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
17. 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.
18. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment A.**

Appeal Rights

19. 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).

20. 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.

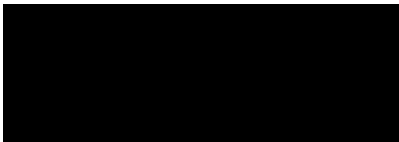
Legislation

21. 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>.

22. 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>

1. Should you have any questions about this Show Cause Notice please contact Janine Fairburn, Authorised Officer via email janine.fairburn@act.gov.au.

Yours Sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

1 June 2022.