

Ms [REDACTED]
Person with Management or Control
Caerus Early Learning Pty Ltd
RE: Coombs Early Learning

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA).
2. 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*.
3. As you are aware, the Authority have recently assessed multiple notifications of incident, submitted by the Provider via NQA ITS between 13 September 2023 and 27 October 2023, which give rise to suspected inadequate supervision at Coombs Early Learning SE-40010858 (the Service) operated by Caerus Early Learning Pty Ltd PR-40013119 (the Provider).
4. The Regulatory Authority is satisfied that the Provider was not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

5. On 13 September 2023, the Authority received a Notification of Incident (NOT-40902103) from the Provider. NOT-40902103 advised that on 13 September 2023, an 18-month-old child fell from the change mat, landing on his bottom and falling forward, bumping his bottom lip. Refer copy of NOT-40902103 at Attachment A.
6. The Provider, upon request, submitted additional information on 14 September 2023 and 1 October 2023. Refer copy of additional documents at Attachment B.
7. On 12 October 2023, the Authority received a Notification of Incident (NOT-40911851) from the Provider. NOT-40911851 advised that on 11 October 2023, a one-year-old child fell from cot, landing on his bottom with possible head contact. Refer copy of NOT-40911851 and attached information at Attachment C.

8. The Provider, upon request, submitted additional information on 13 October 2023. Refer copy of additional documents at [Attachment D](#).
9. On 26 October 2023, the Authority received a Notification of Incident (NOT-40916980) from the Provider. NOT-40916980 advised that on 26 October 2023, a three-year-old child, [REDACTED], let himself out of the emergency fire door located in the Service, unnoticed by educators. [REDACTED] was subsequently found by a member of the public and returned to the Service. Refer copy of NOT-40916980 and attached information at [Attachment E](#).
10. On 27 October 2023, the Authority received a two Notifications of Incident (NOT-40917376 and NOT-40917340) from the Provider. NOT-40917376 and NOT-40917340 advised that on 26 October 2023, a five-year-old child, [REDACTED], and a four-year-old child, [REDACTED], also let themselves out of the emergency fire door located in the Service, unnoticed by educators.
11. Furthermore, NOT-40917376 and NOT-40917340 advised that [REDACTED] returned to the Service on his own accord and alerted the Service that he had left the Service with another child who hadn't returned. [REDACTED] was subsequently located at Charles Weston School, after being initially found by the OOSH Team.

Law

12. In relation to the non-compliance identified, the following provisions of the *Law* are engaged by the notifications:

Section 165(1) of the *Law* - Offence to inadequately supervise children

The approved provider of an education and care service must ensure that 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(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, Providers and Services

13. 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”.

14. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:
 - (a) *that the rights and best interests of the child are paramount; ...*
 - (f) *that best practice is expected in the provision of education and care services.*
15. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - (c) *to monitor and enforce compliance with this law;*
16. 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*.
17. 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.
18. 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.

Decision

19. The Authority has considered all information supplied by the Provider via the five notifications, and all additional information submitted, and is satisfied that there is sufficient evidence to substantiate offences under section 165(1) of the *Law*, and further engaging 167(1) of the *Law* for each incident.
20. The Authority is satisfied that, on 13 September 2023 and 11 October 2023, the Provider failed to ensure that that all children were adequately always supervised while in the care of the Service, allowing infant children to fall a distance from height and sustain injury, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.
21. The very nature of the incidents, with information submitted identifying that in both instances an educator left the infants without ensuring safety precautions were in place to prevent the child from falling supports the offences being substantiated.
22. Information submitted via NOT-40902103 identifies that an educator was not watching or keeping hands on the child to stabilise him when on the nappy change mat, resulting on him falling, landing on his bottom and falling forward, bumping his bottom lip.

23. Information submitted via NOT-40911851 identifies that an educator left an infant child unattended and unsupervised, even if only for a short time, in a cot without ensuring that the safety side had been raised and locked in place, resulting in the child falling from cot, landing on his bottom with possible head contact.
24. The Authority is satisfied that, on 26 October 2023, the Provider failed to ensure that that all children were adequately always supervised while in the care of the Service, allowing three preschool age children to exit the Service unnoticed by educators, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.
25. The very nature of the incidents, with information submitted identifying that in both instances children were able to exit the Service without educator knowledge, and that educators only became aware of the children being missing when alerted either by a member of the public or the child themselves, supports the offences being substantiated.
26. Information submitted via NOT-40916980 identifies that inadequate supervision gave [REDACTED] opportunity at exit the Service unnoticed. Information indicates that the Service was alerted to this only by a member of the public noticing the child trying to climb over a security fence. The Authority notes that should the person have had other motives then to bring the child to the front door of the Service, the consequences could have been catastrophic.
27. Information submitted via NOT-40917376 and NOT-40917340 identifies that inadequate supervision again in the afternoon of 26 October 2023 gave [REDACTED] and [REDACTED] opportunity at exit the Service unnoticed.
28. Information indicates that the time that the children left the Service is unknown, and in this instance, they were able to go to the school adjacent to the Service. The Authority notes that on balance of probabilities, the two children would have had to cross over a carpark to get to the school - again, the consequences could have been catastrophic.
29. A Provider's obligations under sections 165(1) and 167(1) of the *Law* is positively and strongly framed – the Provider must always ensure adequate supervision, and 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 or illness. Adequate supervision is viewed as a reasonable precaution to be taken to protect children from harm and hazard likely to cause injury or illness.
30. Furthermore, it is considered a reasonable precaution to ensure that staffing and supervision levels always meet the emotional, developmental, and physiological needs of children and educators alike. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.

31. People and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the *Law*.
32. The Authority acknowledges that the Provider has advised in additional information submitted of multiple remediation steps being undertaken to mitigate the risk of further non-compliance relating to supervision of children.
33. Considering the information submitted by the Provider, the level of seriousness of the contraventions, and the objectives and guiding principles of the *Law*, I have decided that issuing a Compliance Notice is appropriate and in the best interests of children.
34. The Authority is empowered to issue a compliance notice under section 177 of the *Law*:

Section 177 of the *Law*– 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.
35. The Compliance Notice is provided as Attachment G to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce evidence of the steps required by the times indicated for each step within the Notice at Attachment G.

Review Rights

36. A decision to issue a compliance notice and a decision to impose a condition on a service approval are ***reviewable decisions*** 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).
37. 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

38. The Education and Care Services National *Law* applies to you as an approved 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>.

39. 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>

40. Should you have any questions about this Decision or Compliance Notice please contact me via email at janine.fairburn@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

2 November 2023