

Ms [REDACTED]

Person with Management or Control

Communities@Work

RE: Communities@Work Ngunnawal Out of School Hours Care

Email: [REDACTED]

Dear Ms [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 are 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 (ACT) (the Law)*. One of the roles is to investigate suspected offences under the *Law*.
2. 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.
3. Authorised Officers are currently investigating suspected offences under of the *Law* relating to the operation of Communities@Work Ngunnawal Out of School Hours Care SE-00009684 (the Service) operated by Communities@Work PR-00005824 (the Provider).
4. The suspected offences relate to an alleged failure by the Provider to ensure adequate supervision of children in the bathroom of the Service whereby one child allegedly produced a pair of scissors and threatened two other children and an alleged failure to ensure reasonable precautions were taken to protect children from harms and hazards as required by the *Law*.
5. Authorised Officers have now finished obtaining evidence (unless further lines of enquiry emerge) and the Authority has determined there is sufficient evidence to support a case to answer regarding the suspected offences under the *Law*.
6. However, the Authority’s investigation is not complete until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you as a delegated Person with Management or Control of the Provider.
7. Detailed instructions of how to respond appear at the end of this Notice.

8. If substantiated, the allegations may constitute offences under sections 165(1) and 167(1) of the *Law* (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated, on the balance of probabilities, it will need to consider whether compliance action is required.
9. Where any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action with the focus being on ensuring future compliance and improved outcomes for children, rather than punishment.
10. Potential compliance actions that may be considered in this instance appear at the end of this Notice.

Grounds for issuing Show Cause Notice

11. The evidence obtained during the investigation to date supports offences under the *Law* relating to the following areas: Adequate supervision and Protection of children from harms and hazards.

Facts

12. On 16 June 2023, the ACT Regulatory Authority (the Authority) received the notification of a complaint, from the Provider, advising that an incident had occurred at the Service whereby a child, [REDACTED], allegedly produced a pair of scissors and threatened two other children, [REDACTED] and [REDACTED] on 13 June 2023.
13. Accompanying the notification was a copy of the original email complaint and subsequent emails exchanged between the complainant and the Provider. Refer notification and additional documents at Attachment A.
14. 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 section 165(1) and 167(1) of the *Law*.

Allegation

15. The following allegation engaging the *Law* is raised by evidence obtained via the investigation process:

Allegation

It is alleged that on 13 June 2023, inadequate supervision resulted in a child, believed to be [REDACTED], having opportunity to physically threaten two peers with a pair of scissors, unnoticed by educators, whilst in the bathroom of the Service, engaging a contravention of section 165(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

Legislation Relevant to the Allegation

16. The following provisions of the *Law* are relevant to the allegation:

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

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(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.

Grounds – Supervision and Protection from Harm

17. **Allegation**

It is alleged that on 13 June 2023, inadequate supervision resulted in a child, believed to be [REDACTED], having opportunity to physically threatened two peers with a pair of scissors, unnoticed by educators, whilst in the bathroom of the Service, engaging a contravention of section 165(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

18. On 27 June 2023, the Provider furnished documents pursuant to a notice, issued under section 215 of the *Law* (215 Notice) on 20 June 2023. Relevant documents submitted included:
- Letter outlining response to the 215 Notice (Attachment B);
 - Staff Records and, Responsible Person Record for 13 June 2023;
 - Child Attendance Records for 13 June 2023;
 - Policies and Procedures, and Wellbeing Framework; and
 - Internal Investigation Documents (Attachment C).

19. On 2 August 2023, the Provider furnished documents pursuant to a secondary 215 Notice, issued on 26 July 2023. Relevant documents submitted included:

- Letter outlining response to the 215 Notice (Attachment D);
- Timeline and Analysis of Information and Additional Needs Declaration History and Email Correspondence (Attachment E);
- Enrolment Records for [REDACTED]; and
- Additional Information (Attachment F).

20. During the investigation, several statements were taken from identified witnesses to the relevant to the alleged matter. Relevant excerpts from these statements are included below in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under the *Law*.

21. Relevant excerpts from Witness A's statement include:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

■ [Redacted text block]

■ [Redacted text block]

■ [Redacted text block]

■ [Redacted text block]

■ [Redacted text block]

■ [Redacted text block]

■ [Redacted text block]

[REDACTED]

32. Relevant excerpts from Witness B's statement include:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. Relevant excerpts from Witness C's statement include:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. It is understood by the Authority that regarding the area known as the "Door/Hall", the person in this space is responsible for supervising the front door and greeting parents as well as issuing bathroom passes to students to use the toilet.

35. The scissors that Witness C states [REDACTED] had in the bathroom were red handled, stainless-steel craft scissors. A photograph of these scissors was shown to Witness C,

who confirmed they were the scissors being referring to. Refer photograph of scissors at Attachment G.

36. Relevant excerpts from Witness D's statement include:

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

█ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

█ [REDACTED]
[REDACTED]
[REDACTED]

█ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

37. Relevant excerpts from Witness E's statement include:

█ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

█ [REDACTED]
[REDACTED]
[REDACTED]

█ [REDACTED]
[REDACTED]

█ [REDACTED]
[REDACTED]

Contraventions supported by evidence.

38. Evidence gathered appears to support that inadequate supervision resulted in █ having the opportunity to physically threatened two peers, with a pair of scissors, unnoticed by educators in the bathroom of the Service, engaging contravention of section 165(1) of the *Law*, and giving rise to a contravention of 167(1) of the *Law*.

Potential Compliance Action

39. 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 the offence is substantiated. Potential compliance actions include:

- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
 - d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
 - f. Cancellation of the service approval under section 79 of the *Law*.
40. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
41. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

Right of response

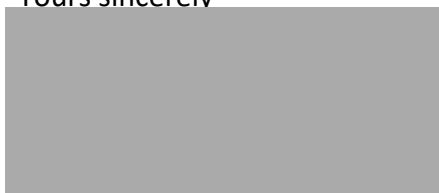
42. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
43. At Attachment G 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 nicole.withers@act.gov.au or by post to:

Children's Education and Care Assurance (CECA)
Education Directorate
Attention: Nicole Withers
GPO Box 158, Canberra ACT 2601.

Caution

44. 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*.
45. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
46. 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.
47. The *Law* applies to you as a provider and any service you operate. 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>.
48. 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>
49. Should you have any questions about this Show Cause Notice please contact Authorised Officer Nicole Withers, via email at nicole.withers@act.gov.au

Yours sincerely



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

26 October 2023