



[REDACTED]

Person with Management or Control

Communities@Work

RE: Communities@Work Abacus Child Care and Education Centre

Email: [REDACTED]

Dear [REDACTED]

Decision to Issue Administrative Action

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated suspected offences at Communities@Work Abacus Child Care and Education Centre SE-00009744 (the Service) operated by Communities@Work PR-00005824 (the Provider).
2. The investigation related to the interactions between formerly employed trainee educator [REDACTED] and numerous children.
3. Web addresses for the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations 2011* (the *Regulations*) are provided for your convenience at the end of this letter.

Background

4. On 29 November 2021, the Authority received a notification from the Provider regarding interactions of [REDACTED] with children, over an extended period of time from 6 August 2021 to 23 November 2021.
5. Due to the risk occasioned to children when exposed to inappropriate discipline or inappropriate interactions, it was determined to investigate suspected offences of inappropriate discipline, failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury, and failure to notify prescribed information to the Authority within the prescribed time.
6. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including documentation and witness statements obtained under section 215 of the *Law*.
7. Such evidence suggested three allegations that supported offences under the *Law* as follows:

- a. The first allegation was that, on 6 August 2021, the Provider failed to ensure that no child being educated and cared for was subjected to discipline that was unreasonable in the circumstances, in that [REDACTED] (an educator employed at the Service) grabbed [REDACTED] (a child being educated and cared for by the Service) by his upper arms, pulled him off a bike, then yelled words to the effect of “we don’t do that!” close to his face, in response to [REDACTED] arguing with another child (unknown), in contravention of section 166(1) of the *Law*, engaging an additional offence under section 167(1) of the *Law*.
 - b. The second allegation was that, between 6 August 2021 and 23 November 2021, the Provider failed to take every reasonable precaution to protect children from harm or hazards likely to cause injury, in that [REDACTED] was permitted to work directly with children without adequate strategies in place to ensure interactions were appropriate, which did not meet the requirements of Regulation 155, engaging an offence under section 167(1) of the *Law*.
 - c. The third allegation was that the Provider failed to notify the Regulatory Authority of a complaint that the *Law* was contravened or an allegation of physical abuse on 6 August 2021, in contravention of section 174 of the *Law*.
8. On 22 March 2022, the Authority issued the Provider with a Show Cause Notice (SCN). Refer [Attachment A](#) for the SCN. Due to size, attachments to the SCN have not been included with this Administrative Letter.
 9. Extensions of time to submit the Response were requested and granted by the Authority.
 10. On 14 April 2022, the Authority received a response to the SCN from the Provider (SCN Response). Refer [Attachment B](#).

Authority’s Reasons

Allegation One – Inappropriate Discipline

11. Upon consideration of all evidence relevant to Allegation One, including the SCN Response, the Authority is satisfied that, although [REDACTED] interactions were not appropriate, the conduct was not instigated for disciplinary purposes in this instance. The Authority additionally considered [REDACTED] difficulties with self-regulation due to his disability to be a mitigating factor.
12. It has been determined by the Authority that the offence under section 166(1) is not substantiated on the balance of probabilities.

Allegation Two – Failure to Take Reasonable Precautions to Protect from Harm - Inappropriate Interactions

13. Upon consideration of all evidence relevant to Allegation Two, including the SCN Response, the Authority has determined that, although [REDACTED] interactions with children as described were inappropriate, the Authority is not satisfied that the Provider has failed to take reasonable precautions to protect children from harm arising from [REDACTED] interactions. The Authority is satisfied that reasonable steps were taken to ensure that [REDACTED] was aware of and understood expectations in relation to interactions with children. It is noted that previous observations of [REDACTED] interactions with a different cohort of children were positive.
14. In making this determination, the Authority considered the circumstances surrounding [REDACTED]'s recent formal diagnosis and developing identification of triggers within the Toddler 3 space. The Authority notes that the Provider likely does not have the depth of understanding or awareness of how to support [REDACTED] in these circumstances, as he was unable to provide details on his support needs so as to inform reasonable adjustments in the workplace.
15. The Authority notes that the Provider did obtain some information from [REDACTED] but that those strategies were relevant for some children and were generally not appropriate disability adjustments to support an adult with a profile such as [REDACTED]. The Authority recommends referring to more appropriate resources should a similar situation arise in future.

Allegation Three – Failure to Notify

16. With regards to Allegation Three, upon consideration of all evidence, including admissions within the SCN Response, the Authority is satisfied that the incident should have been notified to the Authority within seven days.
17. It has been determined by the Authority that an offence under section 174 of the *National Law* is substantiated. The Authority has noted the remedial actions undertaken by the Provider to mitigate risk of late notification in the future and does not require any additional action to be taken.

General

18. Although an offence under section 166(1) was not substantiated, the Authority wishes to take the opportunity to clarify its expectations and interpretation of inappropriate discipline offences under the *National Law*, in response to some of the submissions made.
19. Firstly, the relevant standard of proof in these circumstances where a show cause notice for specified statutory compliance action has been issued is the civil standard of the balance of probabilities. If the proceedings were presented via criminal prosecution, the standard of proof would then be beyond reasonable doubt.

20. Secondly, the Information Sheet on inappropriate discipline published by ACECQA is not determinative of the Authority's functions or implementation of the *National Law*. It is further noted that the sheet is referring to how a Provider can demonstrate compliance in an Assessment and Rating scenario, which is entirely different from circumstances involving a suspected offence. The first is concerned with preventative steps, rather than exculpation.
21. The Authority's view is that it is not appropriate to "read down" the meaning of the provision in this way and it is not an argument that would be accepted by the Authority had the conduct been disciplinary in nature.

Decision

22. The *Law* works to protect a particularly vulnerable part of 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*.
23. A key object 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.
24. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance, for example fines or compliance notices through to suspension of your service approval and/or prosecution. Many of these options allow the Authority to publish details of your non-compliance.
25. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken to mitigate the likelihood of late notification in the future, the Authority has decided to issue this Administrative Action rather than statutory compliance action.
26. The Authority is satisfied that the steps taken by the Provider will satisfy the Authority's expectations and no further action or documentation is required by the Authority.
27. The substantiated breach of Section 174 has been recorded on your file and may be taken into account by the Authority when considering any further applications for service approvals in the ACT or in the event of further similar contraventions.

Legislation

28. 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>.
29. 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>

30. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman on (02) 6205 2012 or by email at tanya.masterman@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate
23 May 2022