

██████████
Person with Management or Control
Camp Australia Proprietary Limited
RE: Camp Australia - Arawang Primary School OSHC

Email: ██████████

Dear ██████████,

Show Cause Notice – Proposed Compliance Action

1. The ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed several Notifications of Incident relating to the operation of Camp Australia - Arawang Primary School OSHC SE-40003187 (the Service) by Camp Australia Pty Limited PR-00002539 (the Provider).
2. Web addresses for the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
3. I am considering compliance action based on suspected contraventions of the Law indicated by evidence obtained via three notifications of incidents submitted by the Provider between 8 March 2021 and 5 April 2021 regarding admitted failure to comply with conditions of the Service Approval.
4. As a delegate of the Authority, I am considering compliance action under Parts 2, 3 and 7 of the Law, including potential reduction in approved numbers of children, or potential suspension or cancellation of Service approval.

Grounds for issuing Show Cause for Compliance Action

5. The Authority is considering suspension or cancellation of Service Approval based on evidence which indicates that there have been contraventions of the Law and Regulations. Specifically, the evidence supports the following grounds for suspension or cancellation:
 - a) the Regulatory Authority reasonably believes that it would not be in the best interests of children being educated and cared for by the service for the service to continue (section 70(a) of the Law);
 - b) A condition of the service approval has not been complied with (section 70(b) of the Law); and
 - c) The service is not being managed in accordance with the Law (section 70(c) of the Law).

Facts

6. On 24 September 2020, the Authority took statutory compliance action against the Provider regarding the Service, which included imposing a condition on the Service Approval as follows (the Staffing Condition):

“For each day on which the Service is educating and caring for children, the Provider must roster one additional educator, for every 1 to 66 children booked in to attend the Service on that same day who is in excess of the educators required to meet the minimum number prescribed by Regulation 123 (including provision of cover for all breaks or other times an educator is not working directly with children as defined by Regulation 13).”

7. The condition came into force 14 days after the issue of the compliance action of 24 September 2020 – being 7 October 2020. The condition was imposed after an investigation conducted by the Authority substantiated multiple offences under the *Law* relating to staffing arrangements, supervision, and risk to children. Refer amended Service Approval at [Attachment A](#).
8. The condition was imposed to minimise the risk of unexpected educator absences resulting in inadequate staffing arrangements being maintained, which would likely impact on the educators’ abilities to adequately supervise children at all times, and put children’s health, safety and wellbeing at risk.
9. On 18 November 2020, the Authority issued an Administrative Decision to the Provider due to a substantiated contravention of section 51(8) of the *Law*. Refer Decision at [Attachment B](#).
10. On 8 March 2021, the Authority received a Notification of Incident (NOT-40517213) from the Provider advising that the Staffing Condition was contravened, as the Provider did not roster the required additional educator. Refer Notification at [Attachment C](#).
11. On 24 March 2021, the Authority received a Notification of Incident (NOT-40523291) from the Provider advising that the Staffing Condition was contravened as the Provider did not roster the required additional educator. Refer Notification at [Attachment D](#).
12. On 5 April 2021, the Authority received a Notification of Incident (NOT-40526951) from the Provider advising that the Staffing Condition was contravened. Refer Notification at [Attachment E](#).

Law

13. Legislative Provisions engaged by the notifications and this Notice are as follows:

Section 19 of the *Law* – Conditions on provider approval

- (1) A provider approval may be granted subject to any conditions that are prescribed in the national regulations or that are determined by the Regulatory Authority.
- (2) Without limiting subsection (1), a provider approval is subject to the condition that the approved provider must comply with this Law.
- (3) A condition of a provider approval applies to the provider as the operator of any education and care service or associated children's service, unless the condition expressly provides otherwise.
- (4) An approved provider must comply with the conditions of the provider approval.

Section 51 of the Law – Conditions on service approval

- (1) A service approval is granted subject to the condition that the education and care service is operated in a way that –
 - a) Ensures the safety, health and wellbeing of children being educated and cared for by the service; and
 - b) Meets the educational and developmental needs of the children being educated and cared for by the service.
- (5) A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by –
 - a) This Law; or
 - b) The Regulatory Authority
- (8) An approved provider must comply with the conditions of a service approval held by the approved provider.

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 cared for by the service from harm and from any hazard likely to cause injury.

Proposed compliance action

14. The compliance actions that the Authority is proposing are:

Section 55 of the Law – Amendment of service approval by Regulatory Authority

- (1) The Regulatory Authority may amend a service approval at any time without an application from the approved provider.
- (2) Without limiting subsection (1), an amendment may vary a condition of the service or impose a new condition on the service approval.

Section 70 of the Law - Grounds for suspension of service approval

A Regulatory Authority may suspend a service approval if—

- (a) the Regulatory Authority reasonably believes that it would not be in the best interests of children being educated and cared for by the service for the service to continue; or

- (b) a condition of the service approval has not been complied with; or
- (c) the service is not being managed in accordance with this Law; or
- (e) the approved provider has contravened this Law as applying in any participating jurisdiction;

Section 77 - Grounds for cancellation of service approval

A Regulatory Authority may cancel a service approval if—

- (a) the Regulatory Authority reasonably believes that the continued operation of the education and care service would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the education and care service; or
- (d) a condition of the service approval has not been complied with.

Reasons

15. The Authority alleges that the Provider has failed to comply with sections 19, 51 and 167 the *Law*.
16. Evidence produced by the Provider by way of Notifications received 8 March 2021, 24 March 2021 and 5 April 2021 (refer Attachments C, D and E), supports multiple failures to comply with the staffing condition on the Service Approval and, accordingly, a reasonable belief that it would not be in the best interests of children being educated and cared for by the Service for the Service to continue, and a failure to manage the Service in accordance with the *Law*, so as to justify suspension of the Service Approval until specified requirements are demonstrated by the Provider as outlined below.
17. The very nature of these notifications submitted 8 March 2021, 24 March 2021 and 5 April 2021 support admissions by the Provider that the Service has not been operating at all times in compliance with section 51 of the *Law*.
18. Admissions made via the notifications indicate that the Provider has not taken reasonable precautions to ensure that not only conditions of the Service approval are complied with at all times, but that the *Law* is complied with, engaging contraventions of section 19(2) of the *Law*, and section 167(1) of the *Law*.
19. The Authority further alleges that, due to the Provider's inability to comply with the Service Approval (including the Staffing Condition), and the *Law*, it is reasonable to believe that the continued operation of the Service would constitute an unacceptable risk to the safety, health or wellbeing of children enrolled at the Service.
20. If it is determined that contraventions of any or all of sections 51, 19 or 167 are substantiated by the Authority, the Authority will be considering the following options to address the non-compliance and ensure the safety, health and wellbeing of children in accordance with section 3(a) of the *Law*:

- a) An amendment to the Service's approved numbers of children allowed to be enrolled – currently the Service approval allows for a maximum total place numbers of 130 children. The Authority would be considering that this number be amended to 100; or
- b) A suspension of the Service approval for a period of two months, until the Provider demonstrates to the Authority that adequate staffing arrangements are engaged to adequately resource the Service's needs, and maintain compliance with the *Law* and Regulations, at all times; or
- c) A cancellation of the Service Approval due to reasons outlined in this Notice.

Right of response

21. You have a right to respond to the allegations set out in this notice. You may, within 30 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
22. At Attachment F 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 janine.fairburn@act.gov.au or by post to:

Children's Education and Care Assurance (CECA)
ACT Education Directorate
Attention: Authorised Officer, Janine Fairburn
GPO Box 158, Canberra ACT 2601.

Caution

23. 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.
24. 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>.
25. 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>
26. Should you have any questions about this Show Cause Notice please contact Janine Fairburn at email janine.fairburn@act.gov.au.

Yours Sincerely



Clare Brookes
Senior Director
Early Childhood Policy and Regulation
ACT Education Directorate

20 April 2021