



Person with Management and Control
Camp Australia Pty Limited
RE: Camp Australia – Arawang Primary School OSHC

Email

Dear

Decision to issue Administrative Action

1. The ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, is satisfied that Camp Australia Pty Limited, PR-00002539 (the Provider) was not complying with the provisions of the *Education and Care Services National Law (ACT)* (the Law) in respect admission of non-compliance via Notification of Incident -NOT-40824950, relating to the operation of Camp Australia – Arawang Primary School OSHC SE-40003187 (the Service) on 14 February 2023.
2. Web addresses to the Law and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this Decision.

Facts

3. On 24 September 2020, the Authority issued the Provider statutory compliance action, which included imposing a condition on the Service’s approval as follows:

“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).”
4. The condition came into force 14 days after the issue of the enforcement action of 24 September 2020 – being 7 October 2020.
5. On 17 February 2023, the Authority received a Notification of Incident (NOT-40824950) from the Provider advising that the Service was unable to meet minimum regulated ratio levels between 3pm and 4:29pm on 14 February 2023.
6. Specifically, it was advised that the Service was expecting 87 children with eight educators, but at 2:20pm a decision was made to urgently relocate an educator from the Service to another school leaving the Service 10 children out of ratio for the afternoon programme. Refer Notification at Attachment A.
7. On 23 February 2023, additional information was requested from the Provider, which was responded to on 24 February 2023. Additional information submitted included educator roster and child attendance records for 14 February 2023. Refer Notification at Attachment B.

8. The educator roster indicated that eight educators were rostered to work on 14 February 2023 with an expected number of children enrolled for the afternoon program expected to be 87, in contradiction of the service approval condition that 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).

Law

9. The Notification and additional information engage the following provisions of the *Law*:

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 169(1) of the *Law* – offence relating to staffing arrangements

An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Reasons for Decision

10. Having considered all the information provided in the Notification, the Authority is satisfied that the Provider has failed to comply with the *Law*. The information contained in the Notification, and via additional information supports contravention of sections 169(1) and 51(8) of the *Law*.
11. In deciding if compliance action should be taken the Authority has considered that the Provider has been proactive in monitoring internally it's compliance with the service approval condition and has advised the Authority voluntarily of the identified non-compliance. Accordingly, the Authority will not be initiating statutory compliance action in this instance.
12. In addition, the Authority has taken into consideration the length of time that the Service was non-compliant for, as well as advised of steps taken to ensure the health, safety and wellbeing of children whilst regulated ratio levels were not being met.

13. This decision, however, is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligations to ensure that the conditions of the service approval are always adhered to, and to ensure that Service is appropriately staffed at all times to meet the developmental and supervision needs of all children at all times. Meeting adequate staffing arrangements and supervision are considered as a reasonable precaution to protect children from harm and any hazard likely to cause injury.
14. The Provider is expected to have contingency plans in place to ensure ratio requirements are always met – this could include rostering additional staff on above minimum regulated ratio levels or lowering the number of children accepted on any day that the staffing arrangements will not support minimum requirements being met.
15. This decision will be recorded on your service file and may be considered in any future applications for approvals, amendments or waivers. This decision may also be considered in determining any future regulatory action, should there be future breaches of the *Law* or *Regulations*.
16. Please be aware that any further contraventions of sections 51(8) or 169(1) of the *Law* will be addressed via stronger statutory action.

Legislation

17. 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>.
18. 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>
19. Should you have any queries regarding this Decision please contact me on (02) 6205 4309 or email Janine.fairburn@act.gov.au.

Yours sincerely



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

14 March 2023