

Ms [REDACTED]
Person with Management and Control
FEL Child Care Centres 4 Pty Ltd
RE: Busy Bees at Crace

Email: [REDACTED]
Cc: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated complaints alleging that the safety, health and wellbeing of children was compromised at Busy Bees at Crace SE-40002600 (the Service), operated by FEL Child Care Centres 4 Pty Ltd PR-40004076 (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. 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 letter.

Facts

4. On 20 March 2020, the Authority received a complaint alleging that on 19 March 2020, there was one educator alone with 18 children in the Preschool Room of the Service, one educator was alone with several babies in the Nursery Room of the Service, and that the Service is often left without a Responsible Person in charge.
5. Due to the risk to children associated when inadequately supervised, and with an approved service that is inadequately staffed, the Authority determined to investigate the allegations.
6. On 19 October 2020, a Show Cause Notice (the Notice) was sent to Provider in relation to the Authority's investigation. Refer copy of the Notice at [Attachment A](#). Please note that due to the size of the Notice attachments, these have not been included with this Decision, however, can be provided upon request.
7. On 30 October 2020, the Provider requested, and was granted, an extension to 9 November 2020 to respond.

8. On 10 November 2020, a response to the Notice, from the Provider, was received. Refer copy of the Provider's response at [Attachment B](#). Please note that due to the size of the response attachments, these have not been included with this Decision, however, can be provided upon request.

Law

9. As a result of its investigation and in considering the Provider's response to the Notice, the Authority found evidence to support non-compliance with the following provisions of the *Law*:

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.

175(1) of the *Law* - Offence relating to requirement to keep enrolment and other documents

An approved provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.

Penalty: \$4000, in the case of an individual.
\$20 000, in any other case.

Reasons

10. Having considered the evidence gathered inclusive of the Provider's response to the Notice, I am satisfied that the Provider has failed to comply with the *Law*.
11. In relation to Allegation One, the Provider's response appeared to be targeted at refuting that reasonable precautions were not in place to mitigate risk of harm or hazard resulting from inadequate supervision. However, the Provider did not appear to address the actual allegations relating to inadequate supervision on the days specified in the allegation, where evidence obtained from witnesses supported inadequate supervision on those specified days.
12. The Authority also noted the Provider submitted evidence to support that appropriate policies, procedures and practices were in place, however, that does not, in itself, mitigate inadequate supervision actually occurring. If those policies, procedures, and practices were followed, and if all reasonable precautions were taken, then inadequate supervision

of children would not have been identified on multiple days across multiple rooms at the Service.

13. I am satisfied that, on 17, 19, 20, 24, 26 and 27 February 2020, and 2 and 19 March 2020, the Provider failed to ensure that all children being educated and cared for by the Service were adequately supervised at all times constituting an offence under section 165(1) of the Law, and engaging a contravention of section 167(1) of the Law.
14. In relation to Allegation Two, the Provider's response acknowledged inaccuracies with working directly with children (WDWC) records and provided evidence and submissions to support that these issues had since been rectified to mitigate the risk of similar non-compliances in the future.
15. I am therefore also satisfied, that on 17, 19, 20, 24, 26 and 27 February 2020, and 2 and 19 March 2020, the Provider, failed to maintain a prescribed record, being WDWC records, engaging an offence under s175(1) of the Law.
16. However, in relation to the s175(1) contravention, I am further satisfied the non-compliances have been rectified, and therefore this contravention warrants no further action.
17. The Authority further noted the Centre's Director, and Nominated Supervisor, appeared to have been on personal leave for the majority of the materially relevant times.

Decision

18. The Law outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
19. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has determined to issue you with this Administrative Action rather than impose any statutory compliance actions.
20. In determining to issue the Provider with an Administrative Action, the Authority took the following into consideration:
 - a) During the materially relevant times, the Centre's Director and Nominated Supervisor was on leave.
 - b) Witness statements and records supported that, under the roof, the Service was operating within the required overall ratio requirements.
 - c) The detailed submissions and evidence supplied by the Provider that issues relating to WDWC records had since been addressed; and
 - d) ██████ was unaccounted for a short period of time – being between five and ten minutes;
 - e) The Provider has advised of strategies which, if implemented and followed correctly, are deemed appropriate in mitigating risk of a similar incident.

21. Regarding the substantiated offences under sections 165(1), 167(1) and 175(1) of the *Law*, the Authority requests that the Provider, within 14 days of receipt of this Decision, submit evidence to demonstrate the following:
- a) Policies and practices relating to ensuring adequate and active supervision have been implemented and communicated with staff at the Service to ensure that risk of a similar incident is mitigated; and
 - b) Copy of the Provider's internal investigation into the matter, inclusive of findings and outcomes.
22. The Authority also notes section 117B of the *Regulations*, in that,

Section 117B of the *Regulations* Minimum requirements for a person in day-to-day charge

(1) An approved provider or a nominated supervisor of an education and care service must not place a person in day-to-day charge unless—

- (a) the person has attained the age of 18 years; and
- (b) the approved provider or nominated supervisor (as the case requires)—
 - (i) has had regard to the matters set out in subregulation (2); and
 - (ii) has taken reasonable steps to ensure that the person has adequate knowledge and understanding of the provision of education and care to children and an ability to effectively supervise and manage an education and care service.

23. As such, the Authority also requests that the Provider, within 14 days of receipt of this Decision, submit evidence to demonstrate the following
- a) That reasonable steps have been taken to ensure that the person placed in day-to-day charge has adequate knowledge and understanding of the provision of education and care to children and an ability to effectively supervise and manage an education and care service.
24. Evidence to demonstrate the above can be forwarded to Authorised Officer, Jeff Beaver, jeffrey.beaver@act.gov.au, or alternatively via post at:

Attention: Jeff Beaver
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate
PO Box 158, Canberra City 2601

25. This Decision will be recorded on your Service file and may be considered in any future applications for approvals, amendments or waivers. It may also be considered in determining the action to be taken should further breaches of the *Law* or *Regulations* be found.

Legislation

26. 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>.

27. The *Law and Regulations* can be viewed at:

- <http://www.acecga.gov.au/national-law>, and
- <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

28. If you have any questions in relation to this letter, please contact Authorised Officer Jeff Beaver on (02) 6207 3917 or by email at.jeffrey.beaver@act.gov.au.

Yours sincerely



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

21 December 2020