



██████████  
Person with Management or Control  
Capital Region Community Service Limited  
RE: Bruce Ridge Early Childhood Centre

Email ██████████

Dear ██████████,

### Decision to issue Administrative Letter

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 Bruce Ridge Early Childhood Centre SE-00009755 (the Service) operated by Capital Region Community Service Limited PR-00005807 (the Provider).
2. The Authority is satisfied that the Provider was not complying with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations (the Regulations)* in respect to this matter.
3. Web addresses to the Law and associated Regulations are provided for your convenience at the end of this Decision.

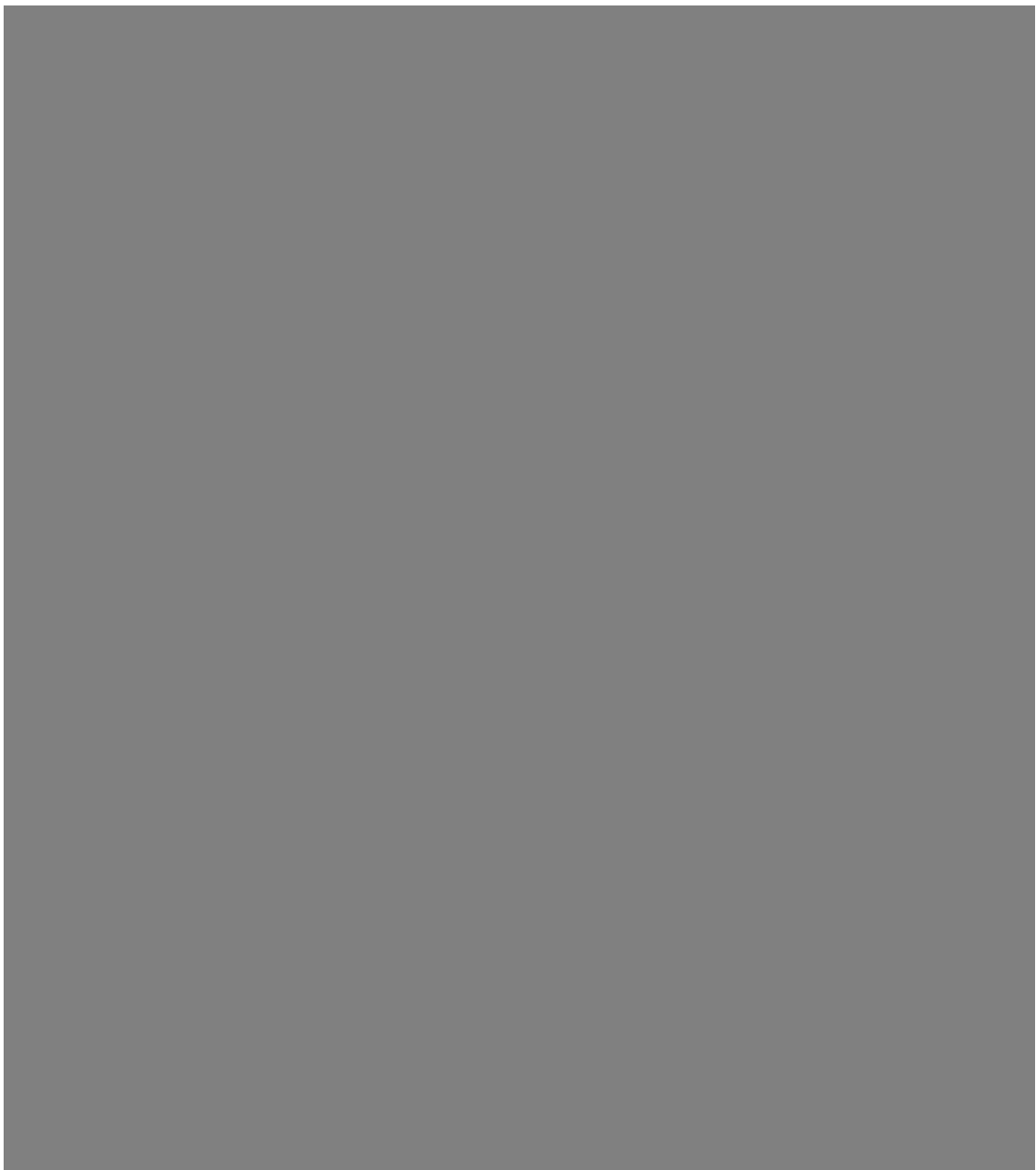
### Facts

4. On 14 April 2022, a notification of complaint (NOT-40691936) was received by the Authority advising of a parent complaint alleging that their child, ██████████ was inadequately supervised, contributing to ██████████ being able to ingest enough paint that she had a cough, sore throat and coloured diarrhea on 11 April 2022. Refer copy of notification and additional information from initial enquiries at Attachment A.
5. Due to the seriousness of the allegations, and risk of harm to children when inadequately supervised, the Authority determined to investigate as allegations raised within the complaint supported a reasonable suspicion of two offences under the *Law*, these being –
  - a) Section 165 – offence related to inadequate supervision.
  - b) Section 167 – offence relating to failure to take reasonable precautions to protect children from harm and hazard.
6. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including prescribed records from the Provider and witness statements obtained under section 215 of the *Law*.
7. On 4 May 2022, a notice, allowable under section 215 of the *Law* (215 Notice), was sent to the Provider. The Provider responded to required information on 11 May 2022, with submission of the following:

- a) Educator/staff records, including all documents and information required by Regulation 147 for all educators working at the service on 11 April 2022;
- b) In addition to staff and nominated supervisor records we require their personal emails, personal telephone contact details and a copy (in colour) of their Working with Vulnerable People (WWVP) registration cards;
- c) Record of responsible person/s at the service on 11 April 2022 as required by Regulation 150;
- d) Supervision policies, procedures and plans in effect on 11 April 2022;
- e) Any risk assessment in place for painting activities by children under 2 years;
- f) Programming on 11 April 2022 including the times of the activities.

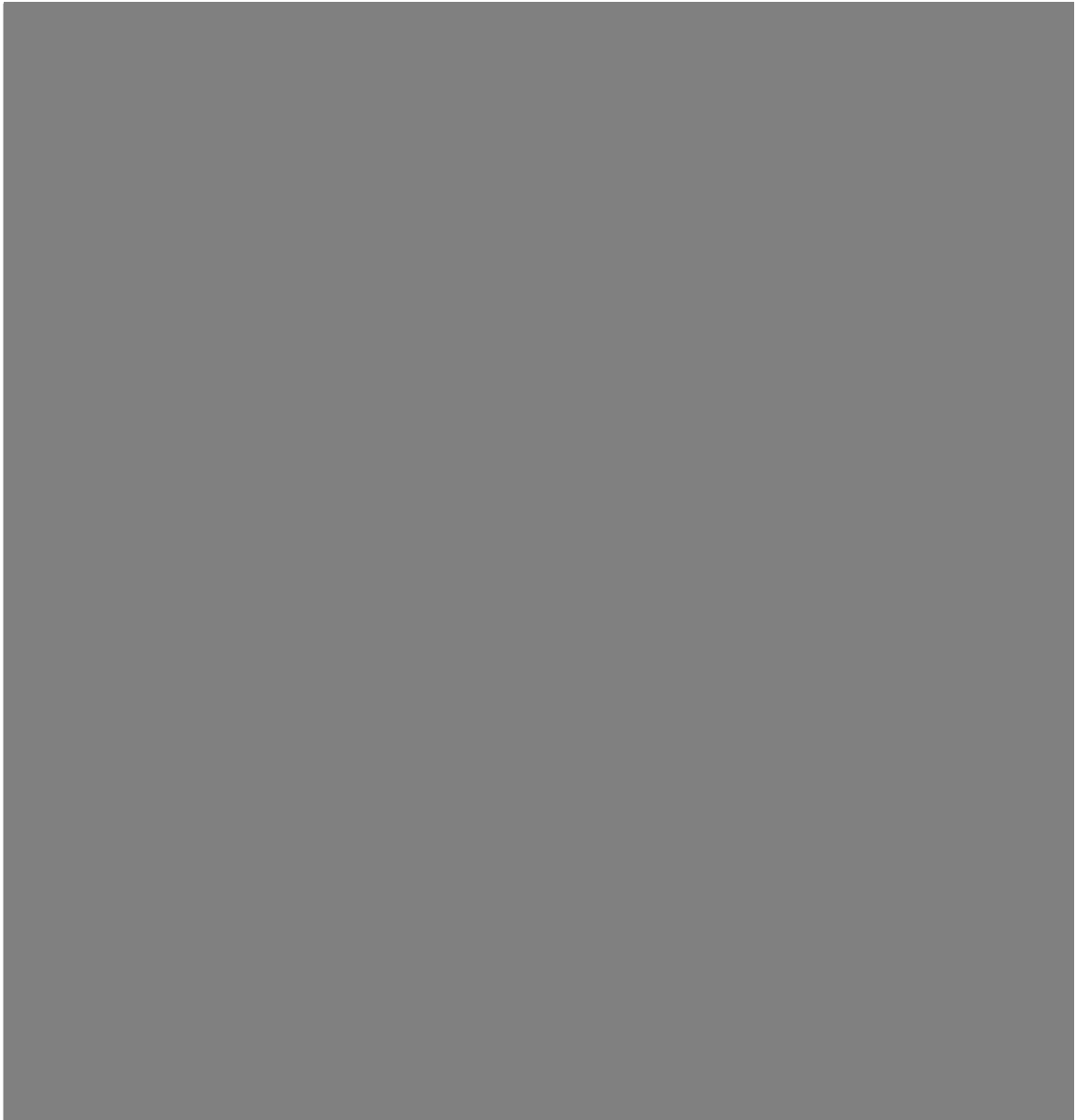
8. Evidence via witness accounts was also obtained by the Authority's investigation.

9. Relevant excerpts from Witness A's statement are as follows:



Refer copy of safety data sheet at [Attachment B](#).

10. Relevant excerpts from Witness B's statement are as follows:



Refer copy of safety data sheet at Attachment B

11. On 25 May 2022, the Authority emailed the Provider requesting documentation that had not been provided in the 215 Notice response but was requested. The Provider responded with the requested documentation and confirmed there was no risk assessment for painting with under 2-year-olds in place at the time of the incident. Refer correspondence at Attachment C.

**Law**

12. The following provisions of the *Law* and *Regulations* were engaged by the investigation:

**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.

**Decision and Reasons**

13. Upon consideration of all evidence obtained during the investigation, the Authority is not satisfied, on balance of probabilities, that all elements of offences under sections 165 of the *Law* were not being met.
14. Evidence supported that there were adequate numbers of educators engaged on 11 April 2022, and that there was an educator actively engaged with ██████ whilst the paint activity was being conducted.
15. However, evidence gathered identified compliance was not being met in relation to reasonable precautions being taken to protect children from harms and hazards likely to cause illness. Specifically, that ██████ ██████ was able to be engaged in an activity for which no risk assessment was in place for a child of her age, and this contributed to her being able to consume paint which was identified as not to be ingested as per the safety data sheet.
16. Furthermore, witness evidence supports those educators conducting the activity did not have knowledge or understanding of what risks the paint posed, especially to a child that they were aware was at a development stage of mouthing resources. Therefore, the Authority is satisfied that section 167(1) of the *Law* was not complied with in this instance.
17. 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*. 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.
18. Regarding the substantiated breach of s167(1) of the *Law*, and the subjective seriousness of the offence, the Authority has decided that statutory compliance action is not required in this instance.
19. This decision is to remind the Provider to ensure that educators are to be trained on how resources should be utilised. In addition, it is to remind the Provider to ensure that all activities being undertaken at the Service are appropriately risk assessed to take into consideration the developmental ages of children, and potential consequences of resources and activities being conducted with mixed age groups where developmental stages of growth and capability differ between the age groups.
20. This decision has been recorded on your file and may be considered by the Authority in the event of further similar breaches. The Authority determines this investigation finalised and no

further enquires will be undertaken regarding this matter unless new relevant information is received.

**Legislation**

21. 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>.
22. 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>
23. If you have any questions in relation to this letter, please contact Authorised Officer Vittorio Colosimo on (02) 6207 1739 or by email at [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au).

Yours sincerely



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

25 July 2022