



[REDACTED]
Nominated Supervisor
Bruce Early Childhood Centre

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated a complaint alleging that the *Education and Care Services National Law (ACT)* (the *Law*) was contravened at Bruce Early Childhood Centre SE-00009754 (the *Service*), operated by Capital Region Community Services Limited PR-00005807 (the *Provider*).
2. Web addresses to the *Law* and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
3. The Authority’s records indicate that you were the *Service*’s Nominated Supervisor at the time, having commenced that role on 3 December 2019.
4. I am considering compliance action based on suspected contraventions of the *Law* and the *Regulations* arising from the investigation into a complaint regarding supervision and failure to take reasonable precautions to protect children from harm and from hazard. As a delegate of the Authority, I am considering compliance action under Part 7 of the *Law*.

Grounds for issuing Show Cause for Compliance Action

5. The Authority is considering compliance action based on evidence that supports contraventions of the *Law* arising from the Authority’s investigation. Specifically, the evidence obtained during the investigation suggests one set of grounds, relating to supervision and protecting children from harm and hazards, which supports offences under the *Law*.

Background

6. On 27 November 2020, the Authority received a direct complaint in relation to the operation of Bruce Early Childhood Centre. Allegations raised via the direct complaint included inadequate supervision and failure to protect children from harm on 23 November 2020.

7. A second allegation was made in relation to potential failure to apply sunscreen on 25 November 2020, which was later determined to be unsupported by the evidence obtained during the investigation.
8. Due to the risk to children when inadequately supervised, the Authority determined to conduct an investigation into suspected offences of inadequate supervision and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.

Supervision and Protection from Harm

Allegation

9. It is alleged that, on 23 November 2020 at approximately 14:15-14:25pm, you, as nominated supervisor, failed to ensure adequate supervision of all children being educated and cared for by the Service, in contravention of section 165(2) of the *Law*, engaging a further contravention of section 167(2) of the *Law*. The circumstances alleged involve [REDACTED] (aged 2.5) and another child being unsupervised in the preschool bathroom, dunking a doll in and out of a toilet and cutting the doll's hair and clothing with metal-bladed scissors.

Legislation Relevant to Allegation

10. The following provisions of the *Law* and *Regulations* are relevant to Allegation One:

Section 165(2) of the *Law* - Offence to inadequately supervise children

A nominated supervisor 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(2) of the *Law* - Offence relating to protection of children from harm and hazards

A nominated supervisor 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.

Evidence Relevant to Allegation

11. On 3 December 2020, a notice, allowable under section 215 of *Law*, was issued to the Provider requiring production of documents by 10 December 2020.
12. Analysis of working directly with children and child attendance records indicated that the Service was adequately staffed during the time of the alleged incident.

13. Records produced by the Provider indicated that the Service was operating on 23 November 2020 and [REDACTED] was a child being educated and cared for by the Service, enrolled in the Toddler room, and in attendance from 8:31 to 14:26 on 23 November 2021.
14. Documents produced by the Provider included a document outlining the grouping system in place at the Service, and documents relevant to a complaint made by [REDACTED] [REDACTED] [REDACTED]. Refer Attachment A.
15. As part of the investigation, the Authority obtained a statement from Ms [REDACTED] Refer Attachment B, for a copy of the statement, redacted where appropriate.
16. As part of the investigation, the Authority obtained statements from witnesses, relevant excerpts from which are included below.
17. Relevant extracts from Witness A's statement are:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

18. Relevant extracts from Witness B's statement are:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Contraventions Supported by Allegation

19. Evidence gathered appears to support the following contraventions of the *Law* by yourself as Nominated Supervisor:
 - (a) Failing to ensure adequate supervision of all children being educated and cared for by the Service on 23 November 2020, in contravention of section 165(2) of the *Law*;
 - (b) Failing to take reasonable precautions to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury on 23 November 2020, in contravention of section 167(2) of the *Law*.

Fitness and Propriety as Nominated Supervisor

20. During the course of the investigation, evidence gathered included corroborated witness statements concerning systems in place that appeared insufficient to ensure adequate supervision of all children being educated and cared for, in that there appeared to be no system in place to ensure supervision of children in the preschool bathroom, or to ensure sufficient communication regarding children's movement between the Toddler and Preschool rooms. There also appeared to be a lack of communication with the parent and Provider regarding the complaint made.
21. This evidence raises questions of fitness and propriety to undertake the role of nominated supervisor. As a delegate of the Authority, I am considering compliance action under Part 7 of the *Law*, including prohibition from being a nominated supervisor or an enforceable undertaking.
22. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations.
23. The concept was described in *Australian Broadcasting Tribunal v Bond*¹ as follows:

The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from context, from the activities in which the person is or will be engaged and the ends to be served by those activities.
24. At minimum, fitness and propriety includes honesty, knowledge and ability.²
25. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have deep knowledge and understanding of the National Quality Framework (including compliance

¹ (1990) 170 CLR 321 per Toohey and Gaudron JJ.

² *Hughes & Vale Pty Ltd v New South Wales (No 2)* (1955) 93 CLR 127 at 156 per Dixon CJ, McTiernan and Webb JJ.

responsibilities), and also possess the ability to manage educators and any other staff, service premises and relationships with families.

26. Information gathered throughout the investigation raises the following concerns regarding your fitness and propriety to be nominated supervisor:
- a. Inadequate knowledge of the Provider's reporting requirements to the Regulatory Authority regarding complaints;
 - b. Inadequate ability to manage and supervise an education and care service.
27. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

Proposed Compliance Action

28. The Authority is proposing compliance action under Part 7 of the *Law*, should the Authority find that the Allegation is substantiated on the balance of probabilities. Potential compliance actions include:
- a. Prohibition from acting in a role as Nominated Supervisor;
 - b. Enforceable undertaking under section 179A of the *Law*;
 - c. Non-statutory action.

Section 182(3) - Grounds for issuing a prohibition notice

- (3) The Regulatory Authority may give a prohibition notice to a person to –
- (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
 - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Regulation 117C – Minimum requirements for a nominated supervisor

For the purposes of section 161A of the *Law*, the prescribed minimum requirements for nomination of a person as a nominated supervisor of an education and care service are that the person must –

- (a) have attained the age of 18 years; and
- (b) have adequate knowledge and understanding of the provision of education and care to children; and

(c) have the ability to effectively supervise and manage an education and care service.

Section 179A - Enforceable undertakings

- (1) This section applies—
 - (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
 - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Right of response

29. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
30. At Attachment C 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 tanya.masterman@act.gov.au or by post to

Children's Education and Care Assurance
Attention Tanya Masterman
GPO Box 158
Canberra ACT 2601.

Caution

31. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under section 296 of the *Law*.
32. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
33. 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.
34. The *Law* applies to you as a nominated supervisor. 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>.
35. 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>
36. Should you have any questions about this Show Cause Notice please contact Senior Investigator Tanya Masterman, on telephone (02) 6205 2012 or email
tanya.masterman@act.gov.au

Yours sincerely



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

15 March 2021