



Ms [REDACTED]
Person with Management and Control
Capital Region Community Service Limited
RE: 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. 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. During the course of the investigation, the Authority received documentation which raised a suspected contravention regarding notification. As a delegate of the Authority, I am considering compliance action under Parts 3 or 7 of the *Law* (not including suspension or cancellation).

Grounds for issuing Show Cause for Compliance Action

4. 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 two sets of grounds that support offences under the *Law*.
5. The first set of grounds relates to supervision and protecting children from harm or hazards. The second set of grounds relates to failure to notify a prescribed matter to the Authority.

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.

First set of grounds –Supervision and Protection from Harm

Allegation One

9. It is alleged that, on 23 November 2020 at approximately 14:15-14:25pm, the Provider failed to ensure adequate supervision of all children being educated and cared for by the Service, in contravention of section 165(1) of the *Law*, engaging a further contravention of section 167(1) 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 One

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

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.

Evidence Relevant to Allegation One

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.

- [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 One

19. Evidence gathered appears to support the following contraventions of the *Law* by the Provider:
- (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(1) 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(1) of the *Law*.

Second Set of Grounds – Notifications

Allegation Two

20. It is alleged that the Provider failed to notify the Regulatory Authority of the complaint made by [REDACTED], verbally on 23 November 2020 and in writing on 26 November 2020, in contravention of section 174 of the *Law*.

Legislation Relevant to Allegation Two

Section 174 – Offence to fail to notify certain information to Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider –

- (b) any complaints alleging –
 - (ii) that this Law has been contravened.

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

- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to:
- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Regulation 176(2)(b) – Time to notify certain information to Regulatory Authority

For the purpose of section 174(4) of the *Law*, a notice must be provided:

- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.

Evidence Relevant to Allegation Two

21. Information gathered, including records produced by the Provider under section 215, indicates that the Nominated Supervisor of the Service was first made aware of the complaint on 23 November 2020 and it was made in writing on 26 November 2020.

22. Examination of NQAITS records indicate that the Authority was not notified of the complaint by the Provider at any time.

Contravention supported by Allegation Two

23. Evidence gathered appears to support a contravention of section 174(2)(b)(ii), in that the Provider has failed to notify the Regulatory Authority of a complaint that the *Law* was contravened on 23 November 2020.

Proposed Compliance Action

24. The Authority is proposing compliance action under Parts 3 or Part 7 of the *Law*, should the Authority find that either or both of Allegations One and Two are substantiated on the balance of probabilities. Potential compliance actions include:
- a. Amendment of the Service Approval under section 55 of the *Law* to impose an appropriate condition;
 - b. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*;
 - c. Non-statutory action.

Right of response

25. 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.
26. 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

27. 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*.
28. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
29. 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.

30. 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>.
31. 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>
32. 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