

Ms [REDACTED]
Nominated Supervisor
Bruce Early Childhood Centre

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Caution

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 Early Childhood Centre SE-00009754 (the Service) operated by Capital Region Community Services Limited PR-00005807 (the Provider).
2. The suspected offences related to failure to adequately supervise children and take reasonable precautions to protect children from harm and hazards on 23 November 2020.
3. Web addresses for the *Education and Care Services National Law Act (ACT)* (the *Law*) and the *Education and Care Services National Regulations 2011* (the *Regulations*) are provided for your convenience at the end of this decision.

Background

4. 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.
5. 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.
6. Due to the risk to children when inadequately supervised, the Authority investigated suspected offences of inadequate supervision and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.
7. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including documentation and witness statements obtained voluntarily and under section 215 of the *Law*.

8. Such evidence suggested a failure to ensure adequate supervision of a child, [REDACTED] and a failure to take reasonable precautions to protect her from harm and hazards likely to cause injury, during the afternoon of 23 November 2021.
9. On 15 March 2021, the Authority issued you with a Show Cause Notice (SCN). Refer Attachment A for the SCN. Due to size, attachments to the SCN have not been included with this Caution but can be provided upon request.
10. On 25 March 2021, you requested an extension of time to respond to the SCN to 2 April 2021. Due to that being a public holiday, an extension was granted to 6 April 2021.
11. On 6 April 2021, you forwarded to the Authority a response to the SCN (Response). Refer Attachment B for the Response. Due to size, attachments to the SCN have not been included with this Caution but can be provided upon request.

Consideration of Response

Allegation

12. 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.

Relevant Legislation

13. The following provisions of the *Law* is relevant to the Allegation:

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.

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 cared for by the service from harm and from any hazard likely to cause injury.

Allegation – Evidence and Submissions

14. The Authority's records indicated that you were the nominated supervisor of the Service at the relevant time, having commenced that role on 3 December 2019.
15. Evidence gathered relevant to the Allegation consisted of:
 - a. documentation produced by the Provider under section 215 of the *Law*, including prescribed records and documentation relevant to a complaint by ██████████ (parent of ██████████);
 - b. witness statements obtained voluntarily, and under section 215 of the *Law*. Relevant statement extracts were provided with the SCN, together with a complete copy of Ms ██████████ statement.
16. It is noted that the Response included the following documents:
 - a. Team Memos signed by educators during the week commencing Monday 16 November 2021 and including information regarding active supervision and headcount procedures;
 - b. Educators' Awareness Record of Supervision Policy signed by educators on various dates between 29 April 2020 and 13 July 2020;
 - c. Educators' Awareness Record of Supervision Policy signed by educators on various dates between 13 January 2021 and 9 February 2021;
 - d. Induction records for educators;
 - e. Notes regarding discussions with educators surrounding supervision in 2020 and 2021;
 - f. Staff meeting minutes for February, August and September 2020;
 - g. Day sheets from 23 November 2021, indicating that ██████████ was not sleeping (the practice being that sleeping children remain in Toddlers and other children go to Preschool room).
17. In the Response, you also referred to your personal history in the sector, discussions with educators surrounding supervision, steps taken since the incident (including reviewed practices surrounding bathroom use, an indoor supervision plan, and separation of preschool and toddler rooms).
18. You advised that, following the Team Memo referred to above, you were confident that educators were following headcount procedures.
19. In the Response, you did not expressly admit or deny the Allegation, but you did not produce any evidence to refute the allegation as framed in the SCN.

20. Under section 165(2) of the *Law*, it is a nominated supervisor's responsibility to ensure adequate supervision of all children being educated and cared for by the Service. It is an offence of strict liability. Ensuring adequate supervision of children is also a reasonable precaution to protect children from harm and from hazards likely to cause injury, so a failure to ensure adequate supervision engages an offence under section 167(2).

Allegation – Authority's Finding

21. For the reasons outlined above, the Authority is satisfied that the following contraventions of the *Law* have been substantiated on the balance of probabilities:
- 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*; and
 - 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*.

Reasons

22. Because offences under sections 165(2) and 167(2) have been substantiated, it is necessary that the Authority consider what, if any, compliance action is required in order to ensure the health, safety and wellbeing of children is protected.

Obligations upon Regulatory Authority, Providers, Services and Nominated Supervisors

23. The starting point for the Authority is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely

'To ensure the safety, health and wellbeing of children attending education and care services; ...'

24. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
- (a) that the rights and best interests of the child are paramount; ...
 - (f) that best practice is expected in the provision of education and care services.
25. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
- (c) to monitor and enforce compliance with this *Law*;
 - (d) to receive and investigate complaints arising under this *Law*.

26. 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*.
27. 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.

Decision

28. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and the mitigating circumstances outlined below, the Authority has decided to issue this Caution rather than statutory compliance action.
29. In making this Decision, the Authority notes that the lapse in supervision of [REDACTED] was due to a failure of educators to follow procedures, which you had made them aware of and they had acknowledged they were aware of. The Authority also notes that steps have been implemented to mitigate the risk of a similar incident, including indoor supervision plans, changes in bathroom practices and closing off open access between the Toddler and Preschool rooms.
30. For these reasons, the Authority will not be taking any statutory compliance action against you. However, this Caution Letter is to emphasise to you the obligations of a nominated supervisor in ensuring that all children being educated and cared for by the Service are adequately supervised at all times, and that reasonable precautions are taken to protect all children from harm and hazards.
31. As nominated supervisor, one of the minimum requirements prescribed under Regulation 117C is to have the ability to effectively supervise and manage an education and care service. This includes ensuring that educators are following relevant policies and procedures. The Provider has an obligation to support you in this task where difficulties are encountered.
32. The substantiated breaches of sections 165(2) and 167(2) have been recorded and may be taken into account by the Authority in the event of any further substantiated breaches of the *Law* in the ACT.

Legislation

33. 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>.
34. 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>

35. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman by email at tanya.masterman@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate

11 May 2021