

██████████
Person with Management or Control
██████████ Consulting Pty Ltd
Snow Gum Early Childhood Learning Centre
████████████████████

Email: ████████████████████

Dear ██████████

Decision to Issue Compliance Notice

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, conducted a risk audit on 1 February 2023 at Snow Gum Early Childhood Learning Centre SE-40013163 (the Service), operated by ██████████ Consulting Pty Ltd PR-00005827 (the Provider).
2. I am satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act 2010*¹ (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*).
3. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this notice.

Background Facts

4. On 1 February 2023, the Authority conducted a risk audit during which enrolment records and incident, injury, trauma and illness records were sighted by authorised officers. The service’s medical conditions policy was also sighted.
5. The audit identified lack of processes regarding enrolment records including, accuracy of information about children’s medical conditions and specific health care needs. Communication plans were not in place for children who have been identified as having a medical condition or specific health care needs.
6. The service was not following the provider’s policies and procedures in relation to medical conditions. The nominated supervisor informed the authorised officers that a copy of the service’s medical conditions policy was not given to families of children with medical conditions or specific health care needs. However, this is a requirement under regulation

¹ Adopted in the ACT by the *Education and Care Services National Law (ACT) Act 2011*.

91 and the service's medical conditions policy states that a copy will be provided to families. The service's medical conditions policy stated that a new enrolment form is to be completed annually. However, previously enrolled children did not have a new enrolment form. The form completed annually by families was only regarding the days of their child's attendance for the commencing year.

7. At the time of the audit, authorised officers sighted numerous incident, injury, trauma and illness records that were not completed correctly and were missing prescribed information such as the full name of the child and/ or the age/ date of birth of the child.
8. On its face, such evidence supported the following breaches of the Law and Regulations listed below.

Law and Regulation

Legislative Provisions Relevant to Allegation

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.

Section 167(2) of the Law - Offence relating to protection of children from harm and hazards

The 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

Regulation 87 – Incident, injury, trauma and illness record

- (1) The approved provider of an education and care service must ensure that an incident, injury, trauma and illness record is kept in accordance with this regulation.
- (2) The incident, injury, trauma and illness record must include—
 - (a) details of any incident in relation to a child or injury received by a child or trauma to which a child has been subjected while being educated and

cared for by the education and care service or the family day care educator, including—

- (i) the name and age of the child; and
 - (ii) the circumstances leading to the incident, injury or trauma; and (iii) the time and date the incident occurred, the injury was received or the child was subjected to the trauma;
- (b) details of any illness which becomes apparent while the child is being educated and cared for by the education and care service or the family day care educator including—
- (i) the name and age of the child; and
 - (ii) the relevant circumstances surrounding the child becoming ill and any apparent symptoms; and
 - (iii) the time and date of the apparent onset of the illness;
- (c) details of the action taken by the education and care service or family day care educator in relation to any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator, including—
- (i) any medication administered or first aid provided; and
 - (ii) any medical personnel contacted;
- (d) details of any person who witnessed the incident, injury or trauma;
- (e) the name of any person—
- (i) whom the education and care service notified or attempted to notify, of any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator; and
 - (ii) the time and date of the notifications or attempted notifications;
- (f) the name and signature of the person making an entry in the record, and the time and date that the entry was made.

(4) The information referred to in subregulation (3) must be included in the incident, injury, trauma and illness record as soon as practicable, but not later than 24 hours after the incident, injury or trauma, or the onset of the illness.

Regulation 91 – Medical conditions policy to be provided to parents

The approved provider of an education and care service must ensure that a copy of the medical conditions policy document is provided to the parent of a child enrolled at an education and care service if the provider is aware that the child has a specific health care need, allergy or other relevant medical condition.

Note. A compliance direction may be issued for failure to comply with this regulation.

Regulation 170 – Policies and procedures to be followed

- (1) The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Penalty: \$1000.

Compliance History

9. In determining appropriate compliance action, I have considered the compliance history of the Service, which has had compliance history prior to this Decision.

Decision

10. Considering the evidence obtained on the day of risk audit, the Service compliance history, and the objectives and guiding principles of the *Law*, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
11. The Authority is empowered to issue a compliance notice under section 177 of the *Law*

177 – Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.
Penalty: \$6 000, in the case of an individual
\$30 000, in any other case.

12. The compliance notice is Attachment A to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.
13. You must produce evidence of the steps required by **the time indicated within the Notice at Attachment A.**
14. The Authority will also be maintaining its auditing of the Service to ensure compliance is appropriately monitored, so as to ensure the health, safety and wellbeing of children being educated and cared for.

Rights of Review

15. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
16. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from the ACECQA website.

Legislation

17. 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>.
18. 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>
19. Should you have any questions about this Decision, or the Compliance Notice please contact delphine.coutin@act.gov.au or by phone on 6207 1114.

Yours Sincerely



Jo Williams
Director Regulatory Operations
Education and Care Regulation and Support

21 March 2023