



MS [REDACTED] and Ms [REDACTED]
Persons with Management and Control
Happy Miracles Pty Ltd
T/A Bright Bees Early Learning - Nicholls
[REDACTED]
[REDACTED]

Email: [REDACTED]

Dear Ms [REDACTED] and Ms [REDACTED]

Decision to Issue Compliance Notice

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, conducted an unannounced Risk Audit on 12 July 2023 as a result of a direct complaint raised against Happy Miracles Pty Ltd PR-40030487 (the Provider) regarding the operation of Bright Bees Early Learning (Nicholls) SE-40010244 (the Service).
2. The Risk Audit focused on whether the Service failed to adequately supervise children and failed to ensure that every precaution was taken to protect children from harm and hazards likely to cause injury.
3. I am satisfied that the Service was not complying with the provisions of the *Education and Care Services National Law Act (ACT) Act 2011* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulations) in respect to operating and education and care service.
4. Electronic links to the Law and Regulations are provided for your convenience at the end of this Decision.

Background Facts

5. On 27 June 2023 a Direct Complaint was received by the Authority alleging the Service frequently failed to meet minimum staff to child ratios.
6. On 12 July 2023, the Authority conducted an unannounced risk audit of the Service with two Authorised Officers entering the service at approximately 8am.
7. On 12 July 2023, persons with management and control were advised immediate action was to be undertaken to clear evacuation path, trim shrubs and discard items in pathway by close of business.

8. On the evening of 12 July 2023, Authorised Officer Jo Williams entered the service to inspect that emergency evacuation path had been cleared, shrubs had been trimmed and discarded items had been removed.
9. A copy of the Risk Audit has been attached ([Attachment A](#)) and should be read in conjunction with this decision Notice.

Grounds – Supervision and Protection from Harm or Hazards

10. The evacuation path was obstructed adjacent to the Giraffes room. Overgrown shrubs covered walkway and discarded items hindered the accessibility of the evacuation path. The service gate located adjacent to the preschool room was unlocked, allowing unauthorised people access to the outdoors play space and to the indoor environments. Reasonable precaution was not taken to protect children being educated and cared for by the service from harm and from hazards likely to cause injury; in contravention of section 167 of the *Law*.
11. Children’s attendance increased rapidly between 8am and 8:45am during the audit. Educators were not able to meet children’s individual needs. Evidence also supported that the overcrowding of indoor space compromised supervision and reasonable precautions were not undertaken to ensure children’s safety and protection from harm or hazards in contravention of sections 165 and 167 of the *Law* respectively.
 - a) Family grouping (Tigers room) between 8:10am and 8:15am, 19 children in attendance with three educators. With an indoor room capacity of 15 children.
 - b) Family Grouping (Bunnies room), at 8:22am 17 children in attendance with an indoor room capacity of 12 children.
 - c) Monkeys room at 8:15am -8:30am, 12 children in attendance with two educators.
 - d) Tigers room at 8:15am -8:30am, 14 children in attendance with one educator.
 - e) Tigers room at 8:15am -8:30am, 14 children in attendance with one educator.
 - f) Tigers room at 8:30am -8:45am, 20 children in attendance with one educator.
 - g) Koalas room at 9am, 9 children in attendance and one educator for seven minutes.

Grounds –Breaches of the Regulations

12. Between 8am to 8:45am, observations made in the Tigers, Monkeys and Elephants’ rooms showed that no direction was provided to children and routines did not support individual needs of children. At 10:24am chairs were still stacked on tables. The program was not responsive and during family grouping the age and abilities of children were not considered. The environments were not set up for children to engage in positive experience. Photos and observations taken by Authorised Officers supported that the educational program did not support children’s individual needs or consider age and routines, in contravention of Regulation 73.
13. Observations recorded within the Tigers’ room included children were settled but disengaged rolling around on the mat and driving a small truck over the wall. No activities were considered or implemented during the morning family grouping. For several minutes, an educator was observed within the Monkeys room disengaged. The educator was not conversing with children nor setting up any activities. Children were rolling around on mats with nothing to do and the educator was standing off to one side of the room disengaged, in contravention of Regulation 155.
14. Throughout the morning various observations by Authorised Officers demonstrated the lack of opportunities provided to children during family grouping to help each child develop their identity and their connection to others. Environments were not welcoming and did not

promote opportunities to interact and develop positive relationships with each other and staff. The lack of planning and the size of the group in which children were being educated and cared for by the service, all contributed to the contravention of Regulation 156.

15. Responsible Person (RP) on entering the service was displayed as [REDACTED]. On entering the Tigers' room educator [REDACTED] identified herself as the RP on duty, in contravention of Regulation 173.
16. Working Directly with Children Records (WDWCR) identified educators signed into multiple rooms simultaneously, in contravention of Regulation 151.
17. At 9am observations made identified educator [REDACTED] setting up a room adjacent to the Elephants' room. The WDWCR identified educator [REDACTED] was signed into the Elephants' room, however, she was setting up the adjacent room and was not working directly with children in the Elephants' room, in contravention of Regulation 13.
18. Indoor space requirements of 3.25 square meters were not considered during family grouping. Between 8am to 8:45am, Authorised Officers counted 20 children within the Tigers' room and at 8:22am, counted 17 children in the Bunnies room, in contravention of Regulation 107.
19. During family grouping the Tigers' room was not equipped with accessible resources that considered the age, interests and capabilities of children who were sharing the environment. Authorised Officers took photos demonstrating various learning environments were under resourced for the number of children in attendance. The learning environments did not support play-based learning, encouraged children to explore, create and construct, engaging a breach of Regulation 105.
20. The daily checklists included a range of tasks, including vacuuming, to be completed by the educators at the end of each day. While walking through the rooms during the morning period some rooms appeared not have been vacuumed from the afternoon before. In addition, daily checklists sighted were not completed within rooms, in contravention of Regulation 170.
21. Numerous examples demonstrated that furniture and equipment used in providing the education and care were not safe, clean and in good repair, engaging a breach of Regulation 103.
 - a) At the time of the visit, bathrooms floors and mats in rooms were observed to be dirty and covered in sand.
 - b) Broken resources were also observed as being in children's play spaces and accessible.
 - c) While checking cot rooms, large crumbs were observed to be in multiple cots. Bedding was not always prepared ready for if a child required sleep. Cot sheets only observed being changed just prior to a child requiring a bed. The mattress was not observed to be cleaned in-between sheet changes.
 - d) A small gym-mat with a large cut was sitting in outdoor play space. The gym mat was not clean.
 - e) Storage appears to be limited, with small tables not in use stored in cot rooms. The table in the half up position was requested to be lowered to the ground to prevent the possibility of a child pulling it on themselves. A range of small wooden chairs were sighted as being stored in infant rooms (Bunnies and Foxes).
 - f) The outdoor play space was littered with discarded items. There appeared to be no procedure to collect rubbish and dispose of it adequately in the daily maintenance of checking and maintaining the outdoor environment.

- g) Tables, walls within the Giraffes' room had children's drawings in pencil and permanent makers. The blind was marked and cracked, and the books were showing signs of age.
- h) The cot placed in the Giraffes' room was not easily accessible as it was filled with items and was not kept in a manner that was ready for use.
- i) The service had equipment set up in the preschool outdoor play space that was of a height requiring soft fall or mats. The movable play equipment was stationed on artificial grass that appeared to have no underlying soft fall which posed a risk of injury.
- j) Bathrooms did not appear to have been cleaned, with dirt/sand observed on floors and around the toilet bowl.

Law and Regulations

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 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.

73 Educational program

- (1) This Part applies in relation to the program (the **educational program**) that is required to be delivered under section 168 of the Law to a child being educated and cared for by an education and care service.
- (2) An educational program is to contribute to the following outcomes for each child—
 - (a) the child will have a strong sense of identity;
 - (b) the child will be connected with and contribute to his or her world;
 - (c) the child will have a strong sense of wellbeing;
 - (d) the child will be a confident and involved learner;
 - (e) the child will be an effective communicator.

156 Relationships in groups

- (1) The approved provider of an education and care service must take reasonable steps to ensure that the service provides children being educated and cared for by the service with opportunities to interact and develop respectful and positive relationships with each other and with staff members of, and volunteers at, the service.
- (2) For the purposes of subregulation (1), the approved provider must have regard to the size and the composition of the groups in which children are being educated and cared for by the service.

155 Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that—

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

173 Prescribed information to be displayed

(1) For the purposes of section 172 of the Law, the following information is prescribed in respect of the matters in paragraphs (a) to (e) of that section—

- (a) in relation to the provider approval—
 - (i) the name of the approved provider;
 - (ii) the provider approval number;
 - (iii) any conditions on the provider approval;
- (b) in relation to the service approval—
 - (i) the name of the education and care service;
 - (ii) the service approval number;
 - (iii) any conditions on the service approval;
- (c) the name of each nominated supervisor;
- (d) in relation to the rating of the service—
 - (i) the current rating levels for each quality area stated in the National Quality Standard; and
 - (ii) the overall rating of the service;
- (e) in relation to any service waivers or temporary waivers held by the service, the details of the waivers including—
 - (i) the elements of the National Quality Standard and the regulations that have been waived; and
 - (ii) the duration of the waiver; and
 - (iii) whether the waiver is a service waiver or a temporary waiver.

(2) For the purposes of section 172(f) of the Law, the following matters and information are prescribed—

- (a) the hours and days of operation of the education and care service;
- (b) the name and telephone number of the person at the education and care service to whom complaints may be addressed;
- (c) in the case of a centre-based service, the name and position of the responsible person in charge of the education and care service at any given time;
- (d) the name of the educational leader at the service;
- (e) the contact details of the Regulatory Authority;
- (f) if applicable—
 - (i) in the case of a centre-based service, a notice stating that a child who has been diagnosed as at risk of anaphylaxis is enrolled at the service; or
 - (ii) in the case of a family day care residence or approved family day care venue, a notice stating that a child who has been diagnosed as at risk of anaphylaxis—
 - (A) is enrolled at the family day care service; and
 - (B) attends the family day care residence or family day care venue;
- (g) if applicable—

- (i) in the case of a centre-based service, a notice stating that there has been an occurrence of an infectious disease at the premises; or
 - (ii) in the case of a family day care residence or approved family day care venue, a notice stating that there has been an occurrence of an infectious disease at the family day care residence or family day care venue.
- (3) An approved provider of an education and care service must display information specified in subregulation (1)(d) by displaying one or both of the following certificates—
- (a) the certificate issued to the approved provider by or on behalf of the Regulatory Authority about—
 - (i) the current rating levels for each quality area stated in the National Quality Standard; and
 - (ii) the overall rating of the service;
 - (b) if the National Authority has given the service the highest rating level—the certificate about the overall rating of the service issued to the approved provider by the National Authority.
- Penalty: \$2,000

151 Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information—

- (a) the name of each educator who works directly with children being educated and cared for by the service;
- (b) the hours that each educator works directly with children being educated and cared for by the service.

13 Meaning of working directly with children

For the purposes of these Regulations a person is working directly with children at a given time if at that time the person—

- (a) is physically present with the children; and
- (b) is directly engaged in providing education and care to the children.

107 Space requirements—indoor space

- (1) This regulation does not apply in respect of a family day care residence.
 - (2) The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the education and care service premises has at least 3.25 square metres of unencumbered indoor space.
- Penalty: \$2000.

105 Furniture, materials and equipment

The approved provider of an education and care service must ensure that each child being educated and cared for by the education and care service has access to sufficient furniture, materials and developmentally appropriate equipment suitable for the education and care of that child.

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.

103 Premises, furniture and equipment to be safe, clean and in good repair

(1) The approved provider of an education and care service must ensure that the education and care service premises and all equipment and furniture used in providing the education and care service are safe, clean and in good repair.

Penalty: \$2000.

(2) This regulation does not apply to a part of a family day care residence that is not used to provide a family day care service.

Compliance History

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

Decision

22. Considering the evidence obtained, the Service's 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.
23. 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.

24. The compliance notice is Attachment B to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.
25. You must produce evidence of the steps required by **the time indicated within the Notice at Attachment B**.
26. 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

27. 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).
28. 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

29. 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>.
30. 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>
31. Should you have any questions about this Decision, or the Compliance Notice please contact Delphine Coutin by email at: delphine.coutin@act.gov.au or by phone on 6207 1105.

Yours Sincerely



Jo Williams
Director
Education and Care Regulation and Support
ACT Education Directorate

8 August 2023