

- b. Educators supervising children in the outdoor yard had positioned themselves close together at the far end of the yard behind a fixed climbing/slide structure. From this position educators could not see the children playing in the fenced sandpit area. At one point a child tipped over a wooden outdoor table with attached bench seats over without awareness by any educators.
 - c. The service *Animal and Pet policy* states that “animals including pets will not be allowed in the sand pit or any other play area”. At the time of the audit AO observed the nominated supervisor’s dog unaccompanied in the infants outdoor playground. No infants were outside at the time.
- 7. The audit identified that a program was not being consistently delivered to all children being educated and cared for at the service contravening Section 168(1) of the *Law* and not meeting the requirements of Regulation 73.
 - a. The program displayed in the Nursery 2 room contained the same experiences every day of the week. The program sighted did not show how the educators facilitate and extend each child’s learning and development.
 - b. The program sighted in the preschool room also offered children the same experiences across the whole week.
- 8. Working directly with children records showed that educators were signing in and out at the same time, not signing out when leaving the room, not signing in when arriving and signing in on the wrong day of the week as required under Regulation 151.
- 9. Emergency and evacuation floor plans were not displayed consistently near each exit at the service as required under Regulation 97(4).
- 10. Nursery rooms did not have a floor plan or instructions, Toddler 2 had the floor plan displayed very high on the wall which made it difficult to follow and the Junior preschool plan was displayed on the door to the kitchenette which was not an emergency door.
- 11. The weekly menu at the time of the audit did not accurately describe the food to be provided by the service each day as stated in Regulation 80. The nominated supervisor explained to AO that the menu had changed on the Thursday and Friday. There was no evidence that families had been notified of the changes prior to them happening.
- 12. Two containers of Zyrtec medication sighted at the time of the audit were past their expiry date.
- 13. During the audit, premises, furniture and equipment were identified as not meeting Regulation 103 as they were not safe, clean or in good repair. The furniture in junior preschool was scribbled on, had ingrained dirt. Nappy change mats have splits in the corners allowing penetration of ingrained dirt. The gates leading out to the front carpark were held together by a plastic cable tie. Children were observed trying to remove the cable tie at the time of the audit.
- 14. During the audit children were not being provided with sufficient materials and developmentally appropriate equipment across several rooms, not meeting the requirements of Regulation 105. Children were observed running aimlessly around the room; educators were struggling to keep children engaged. The children were unable to

build anything with the magnetic blocks as there were not sufficient blocks provided. The children were throwing the blocks off the table and standing on them.

15. The audit noted that educators were observed to be lacking skills to support distressed children. Interactions were poor with some educators speaking to children in a firm manner, lacking warmth. An educator was observed guiding a child by firmly pushing her hand into the child's back. An educator in Nursery 2 was observed sitting with a child who was crying. The educator was not interacting in any way with the child. The educator did not appear to have knowledge of how to settle a distressed child as the child was crying for most of the time that the AO was observing. The child was not offered a bottle, nappy change and the educators did not discuss what could have caused this child to become so upset.
16. It was noted at the time of the audit that the outdoor environment provided limited possibilities for children to engage with the natural environment, failing to comply with Regulation 113.

Law and Regulations

Legislative Provisions Relevant to Compliance Audit

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 168 of the Law - Offence relating to required programs

(1) The approved provider of an education and care service must ensure that a program is delivered to all children being educated and cared for by the service that—

- (a) is based on an approved learning framework; and
- (b) is delivered in a manner that accords with the approved learning framework; and

Authorised by the Chief Parliamentary Counsel Part 6—Operating an Education and Care Service Education and Care Services National Law Act 2010 No. 69 of 2010 123

- (c) is based on the developmental needs, interests and experiences of each child; and
- (d) is designed to take into account the individual differences of each child.

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

Regulation 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.

Regulation 77 –Health, hygiene and safe food practices

- (1) The approved provider of an education and care service must ensure that nominated supervisors and staff members of, and volunteers at, the service implement—
- (a) adequate health and hygiene practices; and
 - (b) safe practices for handling, preparing and storing food—
to minimise risks to children being educated and cared for by the service.

Penalty: \$2000.

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.

Regulation 145 – Staff record

- (1) The approved provider of a centre-based service must ensure that a staff record is kept for that service in accordance with this Division.
- (2) The staff record must include—
- (a) the information about nominated supervisors set out in regulation 146; and
 - (b) the information about staff members set out in regulation 147; and
 - (c) the information about the educational leader set out in regulation 148; and
 - (d) the information about volunteers set out in regulation 149(1).

Regulation 97 (4) Emergency and evacuation procedures

The approved provider of an education and care service must ensure that a copy of the emergency and evacuation floor plan and instructions are displayed in a prominent position near each exit at the education and care service premises, including a family day care residence and approved family day care venue.

Penalty: \$2000.

Regulation 80 (b) Weekly Menu

- (1) The approved provider of an education and care service that provides food and beverages (other than water) to children being educated and cared for by the service must ensure that a weekly menu—
- (b) accurately describes the food and beverages to be provided by the service each day.

Penalty: \$1000.

Regulation 95 (a) Procedure for administration of medication

Subject to regulation 96, if medication is administered to a child being educated and cared for by an education and care service—

- (a) the medication must be administered—
 - (i) if the medication has been prescribed by a registered medical practitioner, from its original container, bearing the original label with the name of the child to whom the medication is to be administered, and before the expiry or use by date; or
 - (ii) from its original container, bearing the original label and instructions and before the expiry or use by date;

Regulation 103(1) 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.

Regulation 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.

Regulation 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.

Regulation 113 Outdoor space – natural environment

The approved provider of a centre-based service must ensure that the outdoor spaces provided at the education and care service premises allow children to explore and experience the natural environment.

Compliance History

17. 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

18. 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.
19. 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: \$6000, in the case of an individual
\$30 000, in any other case

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

Rights of Review

21. 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).
22. 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

25. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
26. The National Law is made up of an Act and Regulations which can be viewed at: <http://www.acecqa.gov.au/national-law>, and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
27. Should you have any questions about this Compliance Notice please contact Nicola Atherton nicola.atherton@act.gov.au.

Yours Sincerely



Jo Williams
Director- Regulatory Operations
Education and Care Regulation and Support

1 September 2023