



Ms [REDACTED]
Person with Management or Control
Aranda Afters Association Incorporated
RE: Aranda Afters

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA). As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. As you may be aware, the Authority is currently investigating a suspected offence at Aranda Afters SE-00009641 (the Service) operated by Aranda Afters Association Incorporated PR-00005802 (the Provider).
3. The suspected offences relate to two boys aged (8:8) and (8:6) leaving the Service, and returning to the Service, unnoticed by educators.
4. 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.
5. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined that there is sufficient evidence to support a case to answer regarding a suspected offence under the *Law*.
6. However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you as the delegated person with management or control (PMC) for the Provider.
7. Detailed instructions of how to respond appear at the end of this Notice.
8. If substantiated, the allegation may constitute an offence under sections 165 and 167 of the *Law* (or any combination). If, after considering all available evidence, the Authority finds any offence is substantiated, it will need to consider whether compliance action is required.

9. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

10. The evidence obtained during the investigation to date supports an offence under the *Law* relating to the children in attendance at the Service:
 - a) Adequate supervision of all children at all times; and
 - b) Protection of children from harms and hazards likely to cause injury.

Allegation relating to Law.

11. The evidence obtained during the investigation raise the following allegation of an offence under the *Law* –

It is alleged that on 23 May 2023, the Provider failed to ensure that all children being educated and cared for by the Service were adequately supervised at all times, in that, children believed to be, [REDACTED] (aged 8:8) an [REDACTED] (aged 8:6), left, and returned, to the service unsupervised and unnoticed, contravening section 165(1) of the *Law* and engaging a further contravention of section 167(1) of said *Law*.

Background

12. On 24 May 2023, the Authority received a notification from the Provider advising that two children alleged they were threatened away from the Service by an unknown male. Refer to Attachment A.
13. It was determined by the Authority that there were reasonable grounds to suspect that offences had, or may have, occurred at the Service and a decision was made to investigate a suspected offence under sections 165 and 167 of the *Law*.

Legislation Relevant to Allegations

14. The following provision of the *Law* is 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

15. Witness evidence and relevant documents support that on 23 May 2023, children [redacted] and [redacted] left, and returned, to the Service unsupervised and unwitnessed by educators.
16. Documents relevant to the allegations submitted by the Provider under notice allowable under section 215 of the *Law* include:
 - a) Child attendance record;
 - b) Working directly with children record;
 - c) Internal investigation documents including:
 - I. Parent conversation record.
 - II. Parent email.
 - III. Sorry letter.
 - IV. Video footage.
 - V. Ed Leader account.
 - d) Policy and Procedure including:
 - I. Supervision policy.
 - II. Missing, absconded and abandoned children.
 - III. Emergency management policy.

Refer to Attachment B (for documents) and Attachment C (for video footage).

17. Working Directly with Children and Child Attendance records indicate that about 4pm there were 129 children in attendance at the Service with 17 educators supervising.
18. Educator statements were obtained exercising powers under section 215 of the *Law*. To clarify, educator witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.
19. Relevant extracts from Witness A's statement include:

[redacted]

[redacted]

[redacted]

[redacted]

[Redacted]

Relevant extracts from Witness B's statement include:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

20. Analysis of the Provider documentation and statements obtained from witnesses, do not adequately identify how the Provider ensures child numbers at the Service are monitored during transition throughout the afternoon. Furthermore, it is not evident how supervision points in the outdoor space, and boundaries, are adequately identified and communicated to staff and children.

Contraventions Supported by the Allegations

21. Evidence gathered appears to support contraventions of sections 165(1) and 167(1) of the *Law*.

Potential Compliance Action

22. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if the offence is substantiated. Potential compliance actions include:
- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or

- c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
 - d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
 - f. Cancellation of the service approval under section 79 of the *Law*.
23. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
24. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified because of the investigation.
25. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process.
26. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

Right of response

27. As mentioned previously, this notice is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
28. At Attachment D 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 brian.cropper@act.gov.au or by post to:

Children's Education and Care Assurance
Attention Brian Cropper
GPO Box 158,
Canberra ACT 2601.

Caution

29. 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*.
30. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
31. 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.
32. The *Law* applies to you as an approved provider and to any service the approved provider operates. 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>.
33. 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>
34. Should you have any questions about this Show Cause Notice please contact Authorised Officer Brian Cropper via email at brian.cropper@act.gov.au

Yours sincerely



Jo Williams

Director Regulatory Operations

Children's Education and Care Assurance

Education and Care Regulation and Support

20 July 2023