



Ms [REDACTED]

Person with Management or Control
Anglicare NSW South NSW West and ACT
RE: Anglicare at Southern Cross ECS

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA).
2. 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*.
3. The Authority is currently investigating multiple suspected offences at Anglicare at Southern Cross ECS – SE-00011292 (the Service) operated by Anglicare NSW South NSW West and ACT – PR-00005801 (the Provider). 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.
4. Authorised Officers have obtained evidence from other sources and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the investigation is not complete until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
5. If substantiated, the allegations may constitute offences under sections 165, 167 and 174 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
6. Where offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

7. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a) Inadequately supervise children.
 - b) Protection from harms and hazards.
 - c) Fail to notify certain information to the Regulatory Authority.

Facts

8. On 18 March 2024, the ACT Regulatory Authority (the Authority) received a direct complaint from a parent alleging that her son, [REDACTED] (2:8), had been placed on one of the picnic table benches, without an educator supporting him, and he had fallen backwards onto the concrete and hit his head. Refer Attachment A.
9. On 21 March 2024, the Authority received a notification from the Provider advising of the parent complaint which was submitted to the Provider on 18 March 2024. Refer Attachment B.
10. Due to the risk of safety, health and wellbeing of a child when inadequately supervised, the Authority determined to investigate the matter, which engaged suspected offences under sections 165, 167 and 174 of the *Law*.

Grounds for notice.

Allegations.

11. It is alleged that about 9:00am on 18 March 2024, the Provider failed to ensure that all children being educated and cared for by the service were adequately supervised, in that, a child believed to be [REDACTED] (2:8), who is unable to support himself while sitting, was left unsupported on a bench seat, causing him to fall from the bench seat, hitting his head on the concrete below, contravening Section 165(1) of the National Law and giving rise to a contravention of section 167(1) of said *Law*.

Allegation Two.

12. It is alleged that about 9:00am on 18 March 2024, the Provider failed to ensure that reasonable precaution was taken to protect children from and any form of hazard likely to cause injury, in that, there were insufficient supports for educators and a child believed to be [REDACTED] (2:8) contravening section 167(1) of the *Law*.

Allegation Three.

13. It is alleged that by 19 March 2024, the Provider failed to notify the Authority of a serious incident that had occurred at the Service on 18 March 2024, when a child believed to be [REDACTED] (2:8) who is unable to support himself while sitting, was left unsupported on a bench seat, causing him to fall from the bench seat, hitting his head on the concrete below, contravening section 174(2)(a)(b)(i) of the *Law*.

Legislation Relevant to the Allegation.

14. The following provisions of the *Law* are relevant to the Allegation:

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: \$11 400, in the case of an individual

\$57 400, 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: \$11 400, in the case of an individual

\$57 400, in any other case.

Section 174(2) of the Law – Offence to fail to notify certain information to Regulatory Authority.

(2) An Approved Provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider-

- a) Any serious incident at the approved education and care service;
- b) Any complaints alleging –
 - i. That a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - ii. That this Law has been contravened;
- c) Information in respect of any other prescribed matters.

Penalty: \$4500, in the case of an individual.

\$22 900, in any other case.

(4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to –

- a) The Regulatory Authority that granted the service approval for the education and care service to which the notice relates; and
- b) In the case of a family day care service, the Regulatory Authority in each participating jurisdiction in which the family day care service operates.

Evidence relevant to the Allegation.


- 1. On 12 June 2024, the Provider furnished documents pursuant to 215 Notice including the following relevant documents:

- a) Record of Responsible Person
- b) Nominated Supervisor Records
- c) Child Attendance Records
- d) WDWC Records
- e) Internal Investigation
- f) Code of Conduct Policy
- g) Provide Child Safe Environment

Refer Attachment C.

15. During the investigation, the Authority obtained a witness statement, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, the witness is identifiable from the content of their evidence.
16. Please note that educator witness statement was obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.
17. Relevant extracts from Witness A's statement include:





Refer Attachment D – Witness A Statement.

18. Relevant extracts from Witness B’s statement include:



Refer Attachment D – Witness B Statement

Contraventions supported by evidence.

19. Evidence gathered appears to support that [REDACTED] was not adequately supervised, in that he was unsupported while sitting on a bench seat when requiring additional support to remain seated safely, contravening section 165(2) of the *Law*, and giving rise to a contravention of 167(2) of the *Law*.

Potential Compliance Action.

20. 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 an 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*.
21. 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.
22. 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

23. As mentioned previously, this is the Provider’s 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.
24. At Attachment E 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 Jarrod.Reid@act.gov.au or by post to:

Children’s Education and Care Assurance (CECA)
Education Directorate
Attention: Jarrod REID
GPO Box 158, Canberra ACT 2601.

Caution

25. I am informing you that the excerpts of witness accounts taken for the Authority’s investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.

26. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
27. 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.
28. 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>.
29. 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>
30. Should you have any questions about this Show Cause Notice please contact Jarrod REID on Jarrod.Reid@act.gov.au.

Yours sincerely



Vittorio Colosimo
A\g Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

28 August 2024