



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

Email [REDACTED]

Dear Mr [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. 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 (ACT)* (the Law), together with receiving and investigating complaints arising under the Law.
2. Authorised Officers recently assessed a Notification of Incident (NOT-40777514) relating to Anglicare at Southern Cross ECS SE-00011292 (the Service) operated by Anglicare NSW South NSW West and ACT PR-00005801 (the Provider).
3. NOT-40777514 notified of an incident occurring 27 September 2022, at the Service, whereby a 7-year-old child, known to be [REDACTED] ingested chemical relating to a science experiment being conducted on the day. Refer copy of NOT-40777514 at Attachment A.
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 the Provider has a case to answer regarding suspected offences. However, the Authority’s assessment is not complete until the Provider has had an opportunity to respond to the allegation/s 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.
6. If substantiated, the allegation/s may constitute an offence under section 167 of the Law. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
7. If any 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

8. The evidence obtained during the notification assessment to date supports an offence under the *Law* within the following area – protection from harms and hazards

Background

9. On 27 September 2022, a Notification of Incident was submitted to the Authority by the Provider advising that on 27 September 2022, the Service was conducting a science experiment using Sodium Polyacrylate when a child (7:7) put their finger in it and then into their mouth before complaining of a burning sensation in their throat.

Refer Attachment A and Attachment B for all documentation relevant to the notification.

10. As part of the initial assessment of the matter, Authorised Officers obtained a safety data sheet for Sodium Polyacrylate via the internet. The safety data sheet identified risks associated with use of the chemical by adults and children alike. Refer copy of internet obtained safety data sheet at Attachment C.
11. It was determined by the Authority that there were reasonable grounds to suspect that an offence had, or may have, occurred at the Service, and a decision was made to make further enquiry into a suspected offence under section 167 of the *Law*.
12. On 24 October 2022, additional information was requested from the Provider, with a response received 27 October 2022. Additional information consisted of risk assessments (initial and amended), and a chemical information sheet. Refer response documents at Attachment D.

Grounds –Protection from Harms and Hazards

Allegation One – Section 167 of the *Law*

13. It is alleged that, on 27 September 2022, reasonable steps were not taken to prevent harm of injury or illness in relation to the science activity undertaken, allowing a 7year old child ability to access and ingest a chemical resulting in a burning sensation in their throat, in contravention of section 167(1) of the *Law*.

Legislation Relevant to Allegations One

14. The following provision of the *Law* is relevant to Allegations One:

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 One

15. The safety data sheet obtained by Authorised officers via the internet (Attachment C) identified the following:
 - a) Chemical causes serious eye irritation;
 - b) Chemical to be kept out of reach of children; and
 - c) Protective clothing should be worn when engaged with the chemical.
16. The Chemical Information Sheet (refer Attachment D) produced by the Provider indicated that:
 - a) the chemistry set is for use only by children over 10 years;
 - b) identified as containing some chemicals that present a hazard to health; and
 - c) To keep young children and those not wearing eye protection away from the experimental area.
17. The Risk assessment utilised at the time of the incident (Attachment D) had no assessment of science experiments being undertaken at the Service. However, it is noted that the amended risk assessment now includes consideration of store-bought activities being utilised in the Service.

Contraventions Supported by Allegation One

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

Potential Compliance Action

19. 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 any offences are 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*; or
 - d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
20. 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. 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 as a result of the investigation.

21. 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.

Right of response

22. As mentioned previously, this letter 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.
23. 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 Vittorio.colosimo@act.gov.au or by post to

Children's Education and Care Assurance
Attention: Vittorio Colosimo
GPO Box 158
Canberra ACT 2601.

Caution

24. 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.
25. 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>.
26. 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>
27. Should you have any questions about this Show Cause Notice please contact Senior Investigator Vittorio Colosimo, on email Vittorio.colosimo@act.gov.au.

Yours sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

21 November 2022