



██████████
Person with Management or Control

██████████
RE: ACT FAMILY DAY CARE SERVICE

Email: ██████████

Dear ██████████,

Decision to Issue Compliance Notice

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA). 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. As you are aware, the Authority has recently investigated suspected offences relating to a child leaving the Service unsupervised and walking home at ACT Family Day Care Service – SE-00014180 (the Service) operated by ██████████ – PR-00008098 (the Provider), on 12 June 2024.
3. The Authority is satisfied that the Provider was not complying with the provisions of the *Law* in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 14 June 2024, the Authority received a complaint alleging that on 12 June 2024, a child known to be ██████████, left the Service unsupervised and unaccompanied and walked to his home address.
5. Due to the risk of harms and hazards likely to cause injury if children are inappropriately supervised, the Authority determined to investigate the matter, which engaged suspected offences under sections 165, 167 and 174 of the *Law*.
6. On 30 July 2024, the Authority sent the Provider a Show Cause Notice (the Notice), advising the Provider that the Authority had determined there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*.
7. The Notice outlined the grounds for issue, relevant evidence supporting the suspected contravention of the *Law*, and potential compliance actions being considered if the allegations was substantiated. Refer copy of Notice at Attachment A (minus attachments due to size, can be provided again upon request).

8. The Notice set out the following allegations to the Provider for response:

Allegation One

It is alleged that on 12 June 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 ██████ left the service unsupervised and walked home unaccompanied, contravening section 165(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

Allegation Two

It is alleged that by 12 June 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 ██████ contravening section 167(1) of the *Law*.

Allegation Three

It is alleged that by 13 June 2024, the Provider failed to notify the Authority of a serious incident that had occurred at the Service on 12 June 2024 when a child believed to be ██████ left the service unsupervised and walked home unaccompanied, contravening section 174(2) of the *Law*.

9. On 14 August 2024, the Provider submitted a response by email to the Notice (the Response) within timeframe. The Response included a response email, along with 8x attachments as follows:

- Compliance History Statement
- Educator Certificate III
- Educator First Aid Certificate
- Home Visit Check 12 June 2024
- Text Message Screenshots
- Risk Assessment
- Call History
- A WhatsApp Video

Refer to a copy of the Response at Attachment B (minus attachments due to size, can be provided again upon request).

Law

10. Provisions of the *Law* relevant to the matters raised in the Notice include the following:

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.

Obligations upon Regulatory Authority

11. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely: "*to ensure the safety, health and wellbeing of children attending education and care services*".
12. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:
 - (a) *that the rights and best interests of the child are paramount; ...*
 - (f) *that best practice is expected in the provision of education and care services.*
13. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - (c) *to monitor and enforce compliance with this law;*
 - (d) *to receive and investigate complaints arising under this law.*
14. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
15. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

16. The *Law* is predominantly a protective *Law* and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Reasons and Decision

17. The Authority has considered all evidence gathered via the investigation process, inclusive of the Provider's response to the Notice, and is satisfied on the balance of probabilities, all allegations are proven, therefore substantiating contraventions of sections 165(1), 167(1) and 174(2) of the *Law*.

18. The Education and Care Services National law and National Regulations require approved providers to ensure that all children being educated and cared for are adequately supervised at all times and are protected from harm and hazards. There are also requirements to notify the regulatory authority of any serious incidents or complaints alleging the safety, health or wellbeing of children has been compromised.

19. This finding is supported by the evidence gathered including CCTV footage showing ██████████ ██████████ walking home in the company of a member of the public, unsupervised and unaccompanied by Service staff, thus supporting the allegations as detailed.

20. Within the Response, the Provider has not refuted or admitted to any allegations but has provided documentation related to the following:

- (a) Risk assessments in place at time of incident.
- (b) Calls made on the day of incident
- (c) Home visit conducted on day of incident
- (d) Text message communication with parent regarding incident.

21. The Provider's response does not articulate, or link to accompanying supportive documents, in how staff are trained and strategies implemented regarding supervision requirements and how staff are monitored to support quality educator practice.

22. However, the Authority acknowledges statements and supportive documents submitted by the Provider to further support strategies in mitigating risk to children from a reoccurrence of a similar incident and communication held with parent regarding incident.

23. A Provider's obligation under section 165 of the *Law* is positively and strongly framed– the Provider must ensure that all children being educated and cared for by the Service are adequately supervised at all time that the children are in care of that service.

24. A Provider's obligation under section 174(2) of the *Law* requires the Provider to notify the Regulatory Authority of any serious incident at an approved education and care serviced operated by the Provider – A notice under subsection (2) must be in writing and be provided within the relevant prescribed time. The prescribed time for a serious incident is within 24 hours of the incident or of becoming aware of the incident.

25. Ensuring that children are adequately supervised, via regular monitoring and mentoring of educator practice, and understanding and awareness of expectations set out in policy and

procedure is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury in compliance with section 167 of the *Law*.

26. People and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case the Provider chose and consented to participating in the education and care of children and has a responsibility to comply with the standard of care under the *Law*.
27. Considering the information submitted by the Provider, the level of seriousness of the contravention, and the objectives and guiding principles of the *Law*, the Authority has decided that issuing a Compliance Notice is appropriate and in the best interests of children.
28. The Authority is empowered to issue a compliance notice under section 177 of the *Law*:

Section 177 of the *Law*– 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: \$6 800, in the case of an individual

\$34 400, in any other case.

29. The Compliance Notice is provided at Attachment C to this decision letter. You are required to take steps directed in the Notice to comply with the relevant provisions. You must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment C**.

Review Rights

30. 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).
31. 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

32. The *Law* applies to you as an approved 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>

33. 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>

34. Should you have any questions about this Decision or Compliance Notice, please contact Authorised Officer Declan Barbagallo via email at declan.barbagallo@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director Investigations
Children's Education and Care Assurance
Education and Care, Regulation and Support
22 October 2024