



ACT

Government

Education and Training

Ms [REDACTED]
Person with Management or Control
Capital Region Community Service Limited
RE: Bruce Early Childhood Centre

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated a complaint alleging that the *Education and Care Services National Law (ACT)* (the *Law*) was contravened at Bruce Early Childhood Centre SE-00009754 (the *Service*), operated by Capital Region Community Services Limited PR-00005807 (the *Provider*).
2. The complaint related to inadequate supervision and failure to take reasonable precautions to protect children from harm and from hazards likely to cause injury, on 23 November 2021.
3. Web addresses for the *Law* and the *Education and Care Services National Regulations 2011* (the *Regulations*) are provided for your convenience at the end of this decision.

Background

4. On 27 November 2020, the Authority received a complaint in relation to the operation of Bruce Early Childhood Centre. Allegations raised via the complaint included inadequate supervision and failure to protect children from harm on 23 November 2020.
5. The complaint, sent to the Nominated Supervisor of the Service, had not been notified to the Regulatory Authority by the Provider.
6. A second allegation was made in relation to potential failure to apply sunscreen on 25 November 2020, which was later determined to be unsupported by the evidence obtained during the investigation.
7. Due to the risk to children when inadequately supervised, the Authority determined to investigate suspected offences of inadequate supervision and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.

8. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including documentation and witness statements obtained under section 215 of the *Law*, and voluntary witness statements. Such evidence suggested two allegations that supported offences under the *Law* as follows:
 - a. Allegation One: it was alleged that, on 23 November 2020 at approximately 14:15-14:25pm, the Provider failed to ensure adequate supervision of all children being educated and cared for by the Service, in contravention of section 165(1) of the *Law*, engaging a further contravention of section 167(1) of the *Law*. The circumstances alleged involve ██████████ (aged 2.5) and another child being unsupervised in the preschool bathroom, dunking a doll in and out of a toilet and cutting the doll's hair and clothing with metal-bladed scissors.
 - b. Allegation Two: it was alleged that the Provider failed to notify the Regulatory Authority of the complaint made by ██████████, verbally on 23 November 2020 and in writing on 26 November 2020, in contravention of section 174 of the *Law*.
9. On 15 March 2021, the Authority issued the Provider with a Show Cause Notice (SCN). Refer Attachment A for the SCN. Due to size, attachments to the SCN have not been included with this Decision but can be produced upon request.
10. On 19 March 2021, the Provider requested an extension of time within which to respond to the SCN to 12 April 2021, which was granted.
11. On 9 April 2021, the Provider produced a partial response to the SCN, being a letter and investigation report by Compliance Consulting (sans attachments).
12. On 12 April 2021, the Provider was requested to produce supporting evidence for the response letter and the attachments to the Compliance Consulting report.
13. On 16 April 2021, the Provider produced the requested documentation. All documents received in response to the SCN are collectively referred to as "the Response". Refer to Attachment B for the response letter and Compliance Consulting report, without attachments and supportive evidence due to size. This additional documentation can be produced upon request.

Consideration of Response

Allegation One – Inadequate Supervision

14. it was alleged that, on 23 November 2020 at approximately 14:15-14:25pm, the Provider failed to ensure adequate supervision of all children being educated and cared for by the Service, in contravention of section 165(1) of the *Law*, engaging a further contravention of section 167(1) of the *Law*. The circumstances alleged involve [REDACTED] (aged 2.5) and another child being unsupervised in the preschool bathroom, dunking a doll in and out of a toilet and cutting the doll's hair and clothing with metal-bladed scissors.

Allegation One – Relevant Legislation

15. Provisions of the *Law* relevant to Allegation One are:

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.

Allegation One – Evidence and Submissions

16. Evidence gathered relevant to Allegation One consisted of prescribed records and witness statements, relevant extracts (or copies where appropriate) of which were included with the SCN.
17. It is noted that the independent investigator concluded that the incident did happen, largely due to a failure of educators to follow supervision policy and procedures, including headcounts, despite being aware of those procedures.
18. With the Response, the Provider included evidence of educators' awareness of supervision and headcount procedures, including a Team Memo signed by educators during the week commencing 16 November 2021 and other discussions held regarding supervision, together with induction records.

19. Evidence of steps taken in response to the incident was included with the Response, such as documentation regarding implementation of indoor supervision plans, revised bathroom procedures, removal of free access between the Toddler and Preschool rooms, walkthrough procedures and a staff meeting with presentation on supervision on 13 April 2021.
20. The Provider further included evidence of performance management procedures resulting from the incident, including formal warnings to three educators and termination of the ECT's employment (to which other factors also contributed).
21. Although admitting that the incident took place, the Provider submitted that the measures in place constituted a "reasonable precaution to ensure effective supervision and protect children from harm and hazard" and did not admit the offence
22. However, under section 165(1) of the *Law*, it is a provider's responsibility to ensure adequate supervision of all children being educated and cared for by the Service. It is an offence of strict liability. Ensuring adequate supervision of children is also a reasonable precaution to protect children from harm and from hazards likely to cause injury, so a failure to ensure adequate supervision engages an offence under section 167(1).

Allegation One – Authority's Finding

23. For the reasons outlined above, the Authority is satisfied that the following contravention of the *Law* have been substantiated on the balance of probabilities:
 - a. Failing to ensure adequate supervision of all children being educated and cared for by the Service on 23 November 2020, in contravention of section 165(1) of the *Law*; and
 - b. Failing to take reasonable precautions to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury on 23 November 2020, in contravention of section 167(1) of the *Law*.

Allegation Two – Failure to Notify

24. it was alleged that the Provider failed to notify the Regulatory Authority of the complaint made by ██████████ verbally on 23 November 2020 and in writing on 26 November 2020, in contravention of section 174 of the *Law*.

Allegation Two – Relevant Legislation

25. The provisions of the *Law* and *Regulations* relevant to Allegation Two is:

Section 174 – 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 –
 - (b) any complaints alleging –
 - (ii) that this Law has been contravened.

- (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.

Regulation 176(2)(b) – Time to notify certain information to Regulatory Authority

For the purpose of section 174(4) of the *Law*, a notice must be provided:

- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.

Allegation Two – Evidence and Submissions

- 26. Evidence relevant to Allegation Two consisted of documentation obtained under section 215 of the *Law*, including diary notes of the Nominated Supervisor and an email from the complainant to the Nominated Supervisor on 26 November 2020

- 27. Evidence included with the Response, such as the transcript of interview with the Nominated Supervisor, indicated that the Provider had not been made aware of the complaint and that the Nominated Supervisor had not followed reporting and notification procedures, which she was aware of, stating that she had prioritised recruitment. The complaint was not raised directly with the Provider by the parent complainant.

- 28. The Nominated Supervisor was issued a written warning for this failure, a copy of which was included in the Response.

- 29. Although the Provider was not made aware of the complaint, presumably until receipt of the Authority’s notice to produce documents under section 215, it is a mandatory obligation.

Allegation Two – Authority’s Finding

- 30. For the reasons outlined above, the Authority is satisfied that the following contravention of the *Law* has been substantiated on the balance of probabilities:

- a. Failing to notify the Regulatory Authority of a complaint that the law was contravened within the prescribed time, in contravention of section 174(2) of the *Law*.

Reasons

31. For the reasons outlined above, the Authority finds contraventions of sections 165, 167, and 174 of the *Law* have been substantiated. It is therefore necessary that the Authority consider what, if any, compliance action is required to ensure the health, safety and wellbeing of children is protected.

Obligations upon Regulatory Authority, Providers and Services

32. The starting point for the Authority is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. 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; ...'

33. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:

(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.

34. 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.

35. The *Law* works to protect a particularly vulnerable part of 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*.

36. A key object 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.

37. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance, for example fines or compliance notices through to suspension of your service approval and/or prosecution. Many of these options allow the Authority to publish details of your non-compliance.

38. It is noted that there has been a change in Nominated Supervisor at the Service and that the Authority's Audit and Risk Management Team has been engaged with the Provider and Nominated Supervisor regarding results of compliance audits.

Decision

39. Considering the evidence, the objectives and guiding principles of the *Law*, and the steps taken by the Provider in response to the incident, the Authority has determined to issue this Administrative Letter.
40. The comprehensive steps taken by the Provider upon becoming aware of the incident, including engaging an independent investigator, implementing reviews of procedures, and providing additional training together with addressing the failure of educators and the Nominated Supervisor to follow known procedures via performance management processes, meet the expectations of the Authority.
41. Accordingly, no further steps by the Provider will be required and, unless further relevant information is received, the Authority considers this matter closed.
42. The substantiated breaches of sections 165, 167, and 174 of the *Law* have been recorded on the Service file and may be considered by the Authority when considering any further applications for service approvals in the ACT.

Legislation

43. 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>.
44. 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>
45. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman by email at tanya.masterman@act.gov.au.

Yours sincerely



Clare Brookes
Assistant Director
Education and Care Regulation and Support
ACT Education Directorate
11 May 2021