



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

Email: [REDACTED]@cracs.com.au

Dear [REDACTED],

### Decision to issue Administrative Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. 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 recently investigated suspected offences under the Law relating to the operation of Bruce Ridge Early Childhood Centre SE-00009755 (the Service) operated by Capital Region Community Service Limited PR-00005807 (the Provider).
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 25 July 2022, the Authority sent the Provider a Show Cause Notice (the Notice) advising the Provider that the Authority had determined that there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the Law.
5. The Notice outlined the grounds for issue, relevant evidence supporting suspected contraventions of Law, and potential compliance actions being considered if allegations were substantiated. Refer copy of Notice (minus attachments due to size, noting they can be produced on request) at Attachment A.
6. The Notice advised that evidence obtained during the investigation supported allegations of offences under the Law as follows:

### Allegation One

It is alleged the Provider failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service, in that an educator known as

██████████ was working directly with children on 11 April 2022 without a current Working with Vulnerable People (WWVP) registration in contravention of section 167(1).

#### Allegation Two

It is alleged that the Provider failed to ensure an unauthorised person did not remain at the Service while children were being educated and cared for by the Service, in that an educator known as ██████████ was working directly with children on 11 April 2022 without a current WWVP registration, in contravention of section 170(2).

7. On 15 August 2022, the Provider submitted a response with 2x identified attachments. Refer copy Response (minus attachments due to size, noting they can be produced on request) at Attachment B.
8. Evidence submitted by the Provider as part of the Response via attachments included:
  - a) Statement/ submission from nominated supervisor; and
  - b) Copy of staffing arrangements Policy and Procedure.

#### Law

9. Provisions of the *Law* relevant to the investigation engaged the following:

##### **Section 167(1) of the Law - Offence relating to protection of children from harm and hazards**

- (1) 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.

##### **Section 170 – unauthorised persons on education and care service premises**

- (1) This section applies to an education and care service operating in a participating jurisdiction that has a working with children law.
- (2) The approved provider of the education and care service must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless-

- (a) The person is an authorised person-
- (b) The person is under the direct supervision of an educator or other staff member of the service.

Penalty : \$1000, in the case of an individual  
\$5000, in any other case.

- (5) In this section- **authorised person** means a person who is-

- (a) A person who is holds a current working with children check or working with children card;

- (e) A person who is permitted under the working directly with children law of this jurisdiction to remain at the education and care service premises without holding a working with children check or a working with children card.

### **Obligations upon Regulatory Authority, Providers and Services**

10. 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*".
11. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular 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.*
12. 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.*
13. 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*.
14. 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.
15. 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.

### **Decision and Reasons**

16. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to substantiate Allegations 1 and 2 – engaging substantiated offences under section 167 and 170 of the *Law* in this instance.
17. In relation to Allegations One and Two, the Authority is satisfied that the Provider failed to take reasonable steps to protect children attending the service from harms and hazards by failing to ensure that all staff possessed a current and valid ACT Working with Vulnerable

People (WWVP) registration card, specifically [REDACTED], engaging a contravention of section 167(1) of the *Law*.

18. In addition, the Authority is satisfied, on balance of probabilities, that whilst not holding a current and valid WWVP registration card, [REDACTED] was allowed to remain on the service premises and was not always supervised whilst engaged in working with children, engaging the further contravention of section 170 of the *Law*.
19. In relation to the Provider's response, the Authority acknowledges that the Provider concedes that based on the combined evidence obtained by CECA and through its own investigations that educator [REDACTED] was working directly with children on 11 April 2022 without a current Working with Vulnerable People (WWVP) registration. CRCS further concedes that, [REDACTED], by not having a current WWVP registration and at times not being in the direct supervision of an authorised person was on the premises unauthorised.
20. The Authority notes that reminders sent out to individuals by the WWVP unit is performed as a courtesy to assist people in ensuring they maintain valid registrations. The individual holder and the employers operating within regulated activities are ultimately responsible for ensuring currency of registration and are able to make proactive enquiries to the WWVP unit to ensure this.
21. The Authority acknowledges that at the time relevant, there were many adaptations to the WWVP process which allowed for automatic extension of expiry dates for some WWVP registration card holders. That there may have been some administrative errors experienced by WWVP which could have contributed to the oversight in expiry dates, however, it this does not mitigate the offences being substantiated in this instance.
22. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children.
23. The Authority appreciates that the Covid-19 pandemic has impacted 'usual' operation of approved services and government alike since 2020. The Authority has taken additional steps over this time to support and inform the sector of changes in reporting and operation as these changes occur to proactively guide compliance adherence during challenging times. However, compliance with the *Law* is not negated by Covid-19 and ultimately remains the responsibility of those choosing to engage within the education and care sector.
24. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, the steps taken by the Provider to mitigate risk of a similar incident, and the environment at the time relevant to the matters, the Authority has decided to issue this administrative action rather than take statutory compliance actions.

25. This Decision is issued to remind the Provider, that always, WWVP registration expiry dates must be monitored vigilantly, and proactive steps taken, if necessary, to ensure that all staff hold current and valid ACT WWVP registration cards at all times. These monitoring strategies may need to be adapted to not only rely on reminders, issued as a courtesy, to protect children from harm and hazard likely to cause injury.
26. In addition, this is as a reminder that as a Provider, it is imperative to ensure that nominated supervisors and educators, at all times, are aware of and understand the policies, procedures and expectations of the Provider, and the National Law, in relation to the operation of the Service, and in their roles of educating and caring for children.
27. The substantiated contraventions have been recorded on your Service file and may be considered by the Authority in determining the action to be taken, should further comparable breaches of the *Law* or *Regulations* be substantiated.

### **Legislation**

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> . 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>
29. Should you have any questions about this Decision please contact Authorised Officer, Vittorio Colosimo at [Vittorio.Colosimo@act.gov.au](mailto: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

12 September 2022