Ms [redacted]
Person with Management or Control
Community Services #1 Incorporated
RE: Mawson Out of School Hours Care

Email: [redacted]

Dear Ms [redacted]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated complaints alleging that the safety, health and wellbeing of children was compromised at Mawson Out of School Hours Care SE-00009687 (the Service), operated by Community Services #1 Incorporated PR-00005865 (the Provider).

2. Web addresses to the *Education and Care Services National Law (ACT)* (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.

3. I am considering compliance action based on various contraventions of the *Law* and *Regulations* indicated by evidence obtained during an investigation into a complaint regarding the care of a particular child enrolled at the Service. As a delegate of the Authority, I am considering compliance action under Parts 3 or 7 of the *Law*, excluding suspension or cancellation of service approval.

Grounds for issuing Show Cause for Compliance Action

4. On 17 August 2020, the Provider notified the Authority of a series of incidents on 12 August 2020 involving a child, [redacted] (NOT-40464425). Refer Attachment A.1 for a copy of the notification and follow-up documents and emails with the Authority. In that notification, the Provider included numerous strategies being pursued, such as training with [redacted] observations of triggers, and that parents/guardians had been notified of behaviour to date,

5. On 21 August 2020, the Provider notified the Authority of a further incident involving [redacted] during the afternoon of 19 August 2020 (NOT-40465528). Refer Attachment A.2. In that notification, it was stated that [redacted]'s guardian was notified at the end of the day, and the strategies outlined in NOT-40464425 were referred to.

6. On 2 September 2020, the Provider notified the Authority of a further incident involving [redacted] on 1 September 2020 (NOT-40468627). Refer Attachment A.3

7. All notified incidents involved escalation of [redacted] following an incident, with restraint and/or shadowing used as a strategy.

8. On 8 September 2020, a direct complaint was received regarding the strategies used in the care of [redacted] (a child who had [redacted]), together with other issues regarding lack of communication regarding incidents.

9. Due to the risk of harm when inappropriate behaviour guidance strategies are implemented, the Authority conducted an investigation.

10. The Authority is considering compliance action based on evidence gathered which indicates that there have been contraventions of the *Law* and *Regulations.* Specifically, the evidence obtained during the investigation suggests three sets of grounds that engage offences under the *Law.*

11. The first set of grounds relates to reasonable precautions to protect a child from harm. The second set of grounds relates to failure to notify the Authority of prescribed circumstances. The third set of grounds relates to record-keeping and parent/carer notification of incidents.

<u>First set of grounds –Protection from Harm</u>

<u>Allegation One</u>

12. It is alleged that, between 3 August 2020 and 3 September 2020, in contravention of section 167(1) of the *Law*, the Provider failed to take reasonable precautions to protect a child being educated and cared for by the Service ([redacted] from harm or hazard likely to cause injury in that there was no support plan in place and methods used on a child with [redacted].

<u>Legislative Provisions Relevant to Allegation One</u>

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 cared 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.

Regulation 170 – Policies and procedures to be followed

The approved provider of a centre-based services must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Penalty: $1000

<u>Evidence Relevant to Allegation One</u>

13. On 11 September 2020, a notice allowable under section 215 of the *Law* (*215 Notice*), was issued to the Provider requiring production of documents by close of business on 21 September 2020. The Provider produced the required documents within the specified time frame.

14. Documents gathered included:

    a) all incident reports for incidents involving [redacted] between 3 August 2020 and 3 September 2020. Two PDF files were produced, named “Incident Reports [redacted] pg 1” and

"Incident Reports [redacted] pg 2" (refer Attachments B.1 and B.2 respectively, as received from the Provider pursuant to section 215);

b) all documents relevant to the education and care of [redacted], including:

   i. enrolment record (Attachment C.1)

   ii. file and meeting notes (Attachment C.2)

   iii. emails (refer Attachment C.3);

c) relevant policies, including behaviour guidance policy (refer Attachment D).

15. More complete enrolment details were obtained by the Authority. Refer Attachment E.

16. Enrolment documentation indicated that [redacted] was a child [redacted] of Additional Child Care Subsidy (child wellbeing). Enrolment documentation was completed by [redacted] (foster carer), with emergency contacts of [redacted] (foster sister) and [redacted] (foster carer)

13. In response to the *215 Notice*, the Provider produced two incident reports, regarding incidents of 19 August 2020 and 1 September 2020. Neither incident report was signed by [redacted] parent/carer.

14. The Provider did not produce a behaviour support plan in response to the *215 Notice,* and correspondence and meeting notes provided indicated that no plan was in place. The Behaviour Guidance Policy (Attachment D) states that:

    > *Behaviour guidance strategies do not under any circumstances involve the use of any physical punishment, isolation, humiliation, intimidation or negative labelling by CS#1 staff.*

15. The Policy further refers to consultation with families, facilitation of educator compliance, provision of resources and training for all educators, development of behaviour guidance plans in consultation with families, considering individual development needs to guide each child, observation and documenting and notification to families of concerning behaviours.

16. During the investigation the Authority obtained statements from numerous witnesses.

17. One statement was obtained utilising information-sharing powers in sections 863B and 863C of the *Children and Young People Act 2008*, a copy of which is Attachment F. Please note that ***protected information*** has been redacted.

18. Further statements were obtained, including utilising powers under section 215 of the *Law*. Relevant extracts are contained in Attachment G.

19. Evidence indicates that [redacted] behavioural challenges escalated in Term 3 and that, prior to that time, challenges were minimal. Evidence further indicates that strategies such as physical restraint, and seclusion/isolation were used without appropriate authorisation or being communicated to [redacted]'s [redacted]; and that minimal (if any) pro-active support measures

were in place, such as de-escalation opportunities upon arrival to the Service, [redacted] instead being required to participate in group time.

20. It is noted that [redacted] enrolment was suspended on 3 September 2020 and that two one-hour sessions of training on [redacted] took place on 3 and 10 November 2020, with the suspension remaining in force until after training.

<u>Contraventions Supported by Allegation One</u>

21. Evidence gathered relevant to Allegation One includes documentation provided under 215 Notice together with witness statements obtained under legislative authority.

22. Evidence gathered relevant to Allegation One appears to support the following contravention of the *Law* by the Provider:

    a. It is alleged that, between 3 August 2020 and 3 September 2020, the Provider failed 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, in contravention of section 167(1) of the *Law,* in that the Behaviour Guidance Policy was not followed and inappropriate strategies used regarding [redacted]

Second Set of Grounds – Notification to Regulatory Authority

<u>Allegation Two – Failure to notify Prescribed Circumstances</u>

23. It is alleged that, in contravention of section 174 of the *Law,* the Provider has failed to notify prescribed circumstances to the Regulatory Authority, being circumstances arising at the Service that pose a risk to the health, safety or wellbeing of a child or children attending the Service.

<u>Legislative Provisions Relevant to Allegation Two</u>

Section 174– Offence to fail to notify certain information to the 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-

    (c) information in respect of any other prescribed matters.

(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 175 – Prescribed information to the notified to Regulatory Authgority

(2) For the purposes of section 174(2)(c) of the Law, the following matters are prescribed-

    (c) any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service;

Regulation 176 – Time to notify certain information to Regulatory Authority

(2) For the purposes of section 174(4) of the Law, a notice must be provided –

(c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

<u>Evidence Relevant to Allegation Two</u>

24. Relevant documents gathered during the investigation included documents produced by the Provider under section 215 of the *Law,* together with witness statements.

25. Examination of the Regulatory Authority's records confirms notification of the following three incidents involving [redacted] being:

a. Incident of 12 August 2020 (Attachment A.1);

b. Incident of 19 August 2020 (Attachment A.2); and

c. Incident of 1 September 2020 (Attachment A.3).

26. Evidence gathered indicates that other incidents posing risk to health safety or wellbeing of children took place, including the following (relevant extracts are contained in Attachment F):

a. Incidents in Term 2 – Supplementary Statement of Witness C;

b. Term 2 - Incident involving [redacted] in which [redacted] was restrained (Witnesses A, C and D);

c. Term 3 – 18 August 2020 – [redacted] secluded in alcove at collection time without explanation (Witness A)

d. Term 3 – Incident of 2 September 2020 – (Witnesses A, B, E)

e. Multiple instances of restraint in August 2020 on unknown dates (Statement of [redacted]

27. The Regulatory Authority was not notified of any incidents other than those in paragraph 25 above, but evidence indicates further prescribed circumstances took place.

<u>Contravention Supported by Allegation Two</u>

28. Evidence gathered relevant to Allegation Two appears to support a failure to notify certain information to the Authority, in contravention of section 174(2) of the *Law*.

<u>Third Set of Grounds – Record-Keeping</u>

<u>Allegation Three– Failure to Maintain Incident Record</u>

29. It is alleged that, in contravention of section 175 of the *Law,* the Provider has failed to maintain a prescribed record, being a record of all incidents and trauma in which [redacted] was involved whilst being educated and cared for at the Service.

Legislative Provisions Relevant to Allegation Three

Section 175(1) of the *Law* – Offence relating to requirement to keep enrolment and other documents

> An approved provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.
>
> Penalty: $4000, in the case of an individual.
>
> $20 000, in any other case.

Regulation 177(1) – Prescribed enrolment and other documents to be kept by approved provider

> For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –
>
> (b) an incident, injury, trauma and illness record as set out in regulation 87.

Regulation 87 – Incident, injury, trauma and illness record

> (1) The approved provider of an education and care service must ensure that an incident, injury, trauma and illness record is kept in accordance with this regulation.
>
> (3) The incident, injury, trauma and illness record must include –
>
> (a) Details of any incident in relation to a child or injury received by a child or trauma to which a child has been subjected while being educated and cared for the education and care service or the family day care educator, including-
>
> (i) The name and age of the child;
>
> (ii) The circumstances leading to the incident, injury or trauma; and
>
> (iii) The time and date the incident occurred, the injury was received or the child was subjected to the trauma;
>
> (e) The name of any person –
>
> (i) whom the education and care service notified or attempted to notify, of any incident, injury, trauma or illness which a child has suffered while being educated and cared for by the education and care service or family day care educator; and
>
> (ii) the time and date of the notifications or attempted notifications.

Evidence Relevant to Allegation Three

30. Evidence relevant to Allegation Three includes all internal incident, injury, trauma and illness records involving or relating to [redacted] for 3 August 2020 to 3 September 2020 (inclusive), produced by the Provider under section 215, together with witness statements, relevant extracts of which are contained in Attachment F.

31. Evidence gathered indicates that [redacted] carer received incident reports for two incidents during the time of his attendance at the Service from 7 February 2020 to 3 September 2020, being:

a. Incident involving [redacted] in Term 2; and

b. Incident in Term 2 involving throwing sand.

32. The Provider produced two incident reports for the period 3 August 2020 to 3 September 2020, neither of which had been signed by a parent/carer.

33. Evidence gathered indicates that no incident, injury, trauma and illness record compliant with Regulation 87 was maintained for the following:

a. Incident on 12 August 2020;

b. Incident of 18 August 2020;

c. Incident of 2 September 2020;

d. Multiple incidents of restraint of [redacted] on unknown dates in August 2020.

Contravention Supported by Allegation Three

34. Evidence gathered appears to support an allegation of failure to maintain a prescribed record, being an incident, injury, trauma and illness record for all incidents involving [redacted] between 3 August 2020 and 3 September 2020 (inclusive), in contravention of section 175(1) of the *Law*.

Allegation Four – Failure to Notify [redacted] Parent of Incidents

35. It is alleged that, in contravention of Regulation 86, the Provider has failed to notify [redacted] [redacted] of any member of [redacted] [redacted] [redacted] in which [redacted] [redacted] was involved between 3 August 2020 and 3 September 2020.).

Legislative Provisions Relevant to Allegation Four

Section 5 of the Law – Definition of Parent

Parent, in relation to a child includes –

(a) A guardian of the child; and

(b) A person who has parental responsibility for the child under a decision or an order of a court.

Regulation 86 – Notification to parents of incident, injury, trauma and illness

The approved provider of an education and care service must ensure that a parent of a child being educated and care for by the service is notified as soon as practicable, but not later than 24 hours after the occurrence, if the child is involved in any incident, injury, trauma or illness while the child is being educated and cared for by the education and care service.

Evidence Relevant to Allegation Four

36. Evidence relevant to Allegation Four includes documents produced by the Provider under section 215 of the *Law*, being all internal incident, injury, trauma and illness records involving or

relating to [redacted] for 3 August 2020 to 3 September 2020 (inclusive), and witness statements (relevant extracts of which are included in Attachment F).

37. [redacted] had [redacted] for [redacted] and was noted as such in his enrolment record.

38. Evidence gathered indicated that [redacted] was orally notified of the following two incidents, but not that [redacted] had been restrained:

   a. Incident of 19 August 2020 involving Beyblades;

   b. Incident of 2 September 2020 involving Ooshies.

39. Evidence gathered indicates that [redacted] was not notified of:

   a. Incident of 12 August 2020 which was notified to the Regulatory Authority – see Witnesses A and C;

   b. Incident of 18 August 2020 – see Witnesses A and C;

   c. Incident of 1 September 2020;

   d. Multiple instances involving restraint on unknown dates in August 2020.

<u>Contraventions Supported by Allegation Four</u>

40. Evidence gathered appears to support a contravention of Regulation 86 in that not all incidents or trauma involving or relating to [redacted] during the period 3 August 2020 to 3 September 2020 (inclusive) were notified to [redacted].

Previous Compliance History

29. The following Service compliance history is noted:

   a. 18 November 2020 - Administrative letter to Provider for substantiated offences under sections 165 and 167 of the *Law*.

30. Please be aware that, when considering any appropriate compliance action, the Authority considers the previous compliance history of a Provider and Service.

Right of response

31. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.

32. At <u>Attachment G</u> 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 at tanya.masterman@act.gov.au or by post to Children's Education and Care Assurance, Attention Tanya Masterman, GPO Box 158, Canberra ACT 2601.

<u>Caution</u>

33. 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*.

34. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.

35. 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.

36. 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.

37. 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

38. Should you have any questions about this Show Cause Notice please contact Tanya Masterman on telephone (02) 6205 2012 or email tanya.masterman@act.gov.au

Yours Sincerely

[redacted]

Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

2 December 2020