

Mr [REDACTED]
Person with Management or Control
ARTEMIS EDUCATION PTY LTD
RE: Artemis Early Learning

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* (the *Law*). One of the Authority's roles is to investigate suspected offences under the *Law*.
2. As you may be aware, the Authority is currently investigating a suspected offence at Artemis Early Learning Fyshwick SE-40002132 (the Service) operated by Canberra Childcare Pty Ltd ATF The Fyshwick Child Care Trust PR-00005814 (the Provider)
3. The suspected offence relates the alleged inadequate response to a child (4.3 years) behaviour toward a peer while in attendance at the Service and a failure to notify the Authority of a complaint.
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 there is sufficient evidence to support a case to answer regarding a suspected offence under the *Law*.
6. However, the Authority's investigation is not complete until you have had an opportunity to respond to the allegation and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you as a person with management or control of the provider.
7. Detailed instructions of how to respond appear at the end of this Notice.
8. If substantiated, the allegation may constitute an offence under sections 167 and 174 of the *Law* (or any combination). If, after considering all available evidence, the Authority finds any offence is substantiated, it will need to consider whether compliance action is required.
9. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

10. The evidence obtained during the investigation to date supports an offence under the *Law* relating to the
- a) protection of children from harms and hazards likely to cause injury; and
 - b) failure to notify the authority of a complaint.

Allegation relating to Law.

11. The evidence obtained during the investigation raise the following allegation of an offence under the *Law* –

Allegation One

It is alleged that between September and October 2022, the Provider failed to ensure every reasonable precaution was taken to protect children from harm and from any hazard likely to cause injury, in that, adequate strategies and plans were not implemented to guide behavior of a child, believed to be [REDACTED], toward a peer, believed to be [REDACTED] contravening S167(1) of the *Law*.

Allegation Two

That between September and October 2022, the Provider failed to advise the Regulatory Authority of a complaint that this *Law* had been contravened, in that a child, believed to be [REDACTED] was being bullied, contravening S174(2)(b)(ii) of the *Law*.

Background

12. On 3 November 2022, the Authority received a parent complaint alleging that the Service was not protecting their child from the behaviours of a peer.
13. It was determined by the Authority that there were reasonable grounds to suspect that offences had, or may have, occurred at the Service and a decision was made to investigate a suspected offence under sections 167 and 174 of the *Law*.

Legislation Relevant to Allegations

14. The following provision of the *Law* is relevant to Allegation 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.

Section 174(2) of the *Law* – Offence to fail to notify certain information to regulatory Authority.

The 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 complaint 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 matter.

Evidence Relevant to Allegation One

- 15. Witness evidence and relevant documents support that between September and October 2022, there was sufficient risk of harm to a child, [REDACTED] from the behaviours of a peer, [REDACTED] necessitating implementation and communication of behavioural support and guidance strategies.
- 16. Documents relevant to the allegations submitted by the Provider under notice allowable under section 215 of the *Law* include:
 - a) Child attendance records;
 - b) Working directly with children records;
 - c) Incident reports;
 - d) Enrolment records;
 - e) Parent communication;
 - f) Doctors Letter 12/12/2022
 - g) Policy and Procedure including:
 - I. Inclusion support planning policy.
 - II. Positive guidance of behaviour.
 - III. Procedures for management of specific behaviours.
 - IV. Specific strategies for positive guidance of behaviour.
- 17. An incident report furnished by the Provider indicate an incident, erroneously recorded as 30 October 2022, where child, [REDACTED] is alleged to have thrown urine on [REDACTED] Refer to Attachment A.
- 18. This incident was discussed on 31 October 2022, between Centre Director and Nominated Supervisor, [REDACTED], and [REDACTED] mother and Service educator, [REDACTED]. It is recorded that [REDACTED] is being assessed for [REDACTED] Although, Ms [REDACTED] nominated strategies to implement should the behaviour reoccur, there is no evidence this information was implemented or communicated to educators. Refer to Attachment B.
- 19. Behavioural supports were also recommended by Child Health Medical Officer, Dr [REDACTED] [REDACTED] in letter dated 12 December 2022 based on a visit on 26 May 2022. Refer to Attachment C.
- 20. Correspondence between the Provider and parent of [REDACTED] Ms [REDACTED], dated 14 November 2022, also advises of steps taken to ensure [REDACTED] behaviour is not repeated. Again, there was no apparent evidence of these steps being implemented, and communicated to staff, that mitigated risk to children from the behaviour of [REDACTED] included with the Providers response pursuant to the 215 Notice issued by the Authority. Refer to Attachment D for record of conversation.

21. The Provider's Procedures for management of specific behaviours, under the heading of, *Continued inappropriate behaviour*, indicate the urine incident was considered serious. Refer to Attachment E.
22. Educator statements were obtained exercising powers under section 215 of the *Law*. To clarify, educator witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.
23. Relevant extracts from Complainant 's statement include:

- h) My son, [REDACTED], (DOB: [REDACTED]) has attended the Service for over three years.

Bottle Incident

- i) About this time in early September 2022, I was advised by [REDACTED] in front of his teacher, [REDACTED] that [REDACTED] threw his drink bottle over the fence and was run over by a car. At the time this version was confirmed by another child, [REDACTED]
- j) As a result of what [REDACTED] had told me and the water bottle incident, I contacted the Service by email and requested a meeting with Ms [REDACTED] Attachment [Redacted] 1 Email dated 19/09/2022.
- k) After this conversation, [REDACTED] returned from the Service and I asked him how his new room was and he told me he was still in the same class.

Behavioural incident

- l) Around early October 2022, I attended the Service to drop [REDACTED] off. It was around 10am and we were running late. I went to the TV room/lunchroom where the children were gathering to watch TV as it was raining that day.
- m) As [REDACTED] and I entered the room, I saw [REDACTED] standing on a child chair crying and throwing toys. [REDACTED] was trying to deescalate [REDACTED] Other children in the room were lined up and [REDACTED] joined them to go to another TV room. I can't recall if there were other educators in the room. I just left as the children were filing out.
- n) I believe that the children we[r]e being taken to another room for safety reasons due to the behaviour of [REDACTED]

Urine incident

- o) At pick up on 28 October 2022 I attended the Service to collect my son, [REDACTED] When I entered the room, [REDACTED] was quiet. At the time there were four teachers in the room. I was then advised by [REDACTED] that [REDACTED] had a bucket of urine thrown on him by [REDACTED] during the day. I could see that [REDACTED] pants had been changed and he was in track shorts. He went to the Service in jeans. His wet clothes were in a bag.
- p) During the trip back to my parent's house, [REDACTED] advised me that [REDACTED] had thrown the urine from the bucket over him.

- q) *At 5.39pm on Friday 28 October 2022, I forwarded an email to the Centre Director at the Service advising of the withdrawal of my son from the Service. I produce that email. Attachment TS 2 – Email dated 28 October 2022*
- r) *I can advise that on regular occasions while picking up [REDACTED] other children including girls would run up and speak with me. Out of now where, [REDACTED] would come over and push one of the girls or punch them.*
- s) *I am aware that [REDACTED] and [REDACTED] are rough together. I have only ever had teachers speak to me once about [REDACTED] being rough with [REDACTED] I have not been told he has been rough with any other children.*

24. Relevant extracts from Witness A's statement are:

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

25. Relevant excerpts from Witness B's statement include:

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[illegible]

Evidence relevant to Allegation Two

26. Communication between the complainant and the Service included the following emails:

- Email dated 19 September 2022;
- Email dated 28 October 2022; and
- Email dated 3 November 2022.

Refer to Attachment F

27. A review of NQA ITs data base does not identify any notification to the Authority regarding a complaint of child, [REDACTED] being bullied by a peer.

28. The response letter to [REDACTED] at Attachment D, indicates the Provider was aware of and responded to the complainant's email.

Contraventions Supported by the Allegations

29. Evidence gathered appears to support contraventions of sections 167(1) and 174(2)(b)(ii) of the *Law*.

Potential Compliance Action

30. 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 the offence is 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*, if the Authority is satisfied that the Service is not complying with the *Law*.
 - d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
 - f. Cancellation of the service approval under section 79 of the *Law*.
31. 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.
32. 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 because of the investigation.
33. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.
34. 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**
35. As mentioned previously, this notice 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.

36. At Attachment G 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 brian.cropper@act.gov.au or by post to:

Children's Education and Care Assurance
Attention Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

37. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are ***protected disclosures*** under section 296 of the *Law*.
38. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
39. 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.
40. The *Law* applies to you as an approved provider and to any service the approved provider operates. 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>.
41. 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>
42. Should you have any questions about this Show Cause Notice please contact Authorised Officer Brian Cropper via email at brian.cropper@act.gov.au

Yours sincerely



Jo Williams
Director Regulatory Operations
Education and Care Regulation and Support
ACT Education Directorate

5 May 2023