



Person with Management or Control
Woden Community Service Ltd
RE: Margaret Hendry OSHC

Email: [\[REDACTED\]@wcs.org.au](mailto:[REDACTED]@wcs.org.au)

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: NOT-00075731

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-00075731) relating to Margaret Hendry OSHC SE-40014983 (the Service) operated by Woden Community Service Ltd PR-00005883 (the Provider).
2. The notification of incident advised that on 12 September 2024, a child was sworn at by an Educator after they became frustrated with the child's behaviour.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance. Web addresses to the Law and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 20 September 2024, a notification of incident (NOT-00075731) was submitted to the Authority by the Provider advising that on 12 September 2024, [REDACTED] climbed the basketball court fence in a heightened state, then headed into the foyer, verbally abusing the Educator helping him at the time by swearing at them. The Educator stated the similar words back to the child in their frustration.
5. On 14 October 2024, the Provider submitted additional documents in response to a request for further information from the Authority, including:
 - Formal meeting notes;
 - Witness statements;
 - Psychological injury record;
 - Record of meeting;
 - Working directly with children record;
 - Notice of investigation;
 - Notice of suspension;
 - Attendance record;
 - Investigation report;
 - The ACT Reportable Conduct Scheme.

6. Please note, documents referred to in paragraphs 4 and 5 are not included due to size. These documents can be provided upon request.

Law

7. The Notification engaged the following provisions of the *Law*:

Regulation 155 - Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that—

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

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

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: \$4 500, in the case of an individual
\$22 900, in any other case.

Decision

8. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under regulation 155, section 167(1) and 174(2) of the *Law* in this instance.
9. As the Authority was not notified of this incident, ensure that all relevant instances are reported in the future, especially including those around appropriate interactions with children.
10. **This letter requires a response to the following:**
 - (a) Provide evidence of the supports in place for this child.
 - (b) Provide evidence of training given to staff around children needing additional support.

Please ensure a response is submitted by close of business 3 December 2024.

11. In relation to regulation 155, section 167 and 174(2) of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that all children were protected from harm or appropriately interacted with, while in the care of the Service on 12 September 2024.
12. The Authority is satisfied that the very nature of the matter notified, and additional information submitted by the Provider supports, on balance of probabilities, the offence being substantiated.
13. The Authority is satisfied that [REDACTED] was not appropriately interacted with, resulting in him being verbally abused by the educator responsible for his education and care at the time.
14. 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.
15. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.
16. This decision serves to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that notifiable incidents are reported to the Authority within the legislated timeframe.
17. This Decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. It may also be considered in determining the action to be taken, should further breaches of the *Law* or associated Regulations be found.

Legislation

18. 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>.

19. Should you have any questions about this Decision please contact me at
vittorio.colosimo@act.gov.au.

Yours Sincerely,



Vittorio Colosimo

A/g Assistant Director Investigations
Education and Care Regulation and Support
Education Directorate

18 November 2024