

Ms [REDACTED]

By email to [REDACTED]

Dear Ms [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 may be aware, the Authority is the regulator of education and care services in the ACT and is responsible for monitoring and enforcing compliance with the *Education and Care Services National Law (ACT) (the Law)*. One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. Authorised Officers are currently investigating an allegation that on 9 August 2024, a child, [REDACTED] (0:9), was left unattended while strapped in a highchair, while attending Bright Future Early Learning, SE-40013163 (the Service) operated by L & M KHIPAL PTY LTD, PR-40035221 (the Provider).
3. 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.
4. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge). 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.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the alleged conduct may constitute inadequate supervision, which is an offence under section 165(1), giving rise to section 167(1) of the *Law*, ensuring that every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury.
7. If, after considering all available evidence, the Authority finds an offence has occurred, it will need to consider whether compliance action is required. 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. Details relating to possible compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

8. The evidence obtained during the investigation to date supports offences under the *Law* within the following area:

- a) Ensuring that all children being educated and cared for by the service are adequately supervised at all times.
- b) Precautions reasonably taken to protect children from harms and hazards likely to cause injury or illness.
- c) Notifying the Regulatory Authority of certain information.

Background

- 9. On 11 August 2024, the Authority received a complaint that a child, [REDACTED] was strapped in a highchair with no educator in sight.
- 10. Due to the risk of harm to children when subjected inadequately supervised, the Authority determined to investigate the matter.
- 11. On 25 October 2024, the Provider furnished documents to the Authority pursuant to section 215 of the *Law*. Refer relevant information at Attachment A.

Allegation of non-compliance

- 12. It is alleged that, on 9 August 2024, a child, [REDACTED] was inadequately supervised at all times while in care of the Service, contravening section 165(1), giving rise to section 167(1) of the *Law*.

Legislation Relevant to Allegations

- 13. The following provision of the *Law* is relevant to the Allegation:

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: \$11 400, in the case of an individual.
 \$57 400, 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 cared 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 of the Law - 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—

(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.

Penalty: \$4500, in the case of an individual.

\$22 900, in any other case.

Evidence relevant to Allegation one and two

14. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Records produced by the Provider supported the following:

- a. The Service was operating on 9 August 2024.
- b. Working directly with children records show that educator [REDACTED] was working alone in the Learners / Creators room between 2:30pm and 3:30pm on 9 August 2024, when Ms [REDACTED] arrived to collect [REDACTED]. Refer Attachment B - WDWC.
- c. Child attendance records show that there were four children being cared for in the Learners / Creators room between 2:30pm and 3:30pm on 9 August 2024. Refer Attachment B – CAR.
- d. Relevant excerpts from the Bright Future Early Learning “Supervision Policy” are.
 - i. Develop and maintain rosters that ensure continuity of care and adequate supervision at all times when children are being cared for and educated in the service.
 - ii. Ensure educators are aware that if they need to move away from children, another educator is to replace them (e.g. collecting additional resources or attending to an individual child’s needs).
 - iii. Ensure educators employ ‘*active supervision*’ strategies at all times.
 - iv. Adopt accepted best practice; ensuring no staff member is left alone with a child to support child protection protocols.
 - v. Ensure that another educator is within sight when working with children and when supporting children with toileting / hygiene routines.
 - vi. Ensure that no child is left alone while eating or at nappy change and toileting times.

Refer Attachment C.

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

Evidence relevant to Allegation three

18. The Authority was provided with evidence that the Service was advised by email that [REDACTED] [REDACTED] was strapped in a highchair while unattended. Refer Attachment D.
19. AO Reid conducted checks via the National Quality Agenda IT System (NQAITs), which revealed the Provider had not made notification of complaint to the Service in relation to the child being left unattended in the highchair, as required by Section 174(2)(b)(i) of the *Law*.

Contravention Supported by Evidence

20. Evidence gathered via the initial assessment of direct complaint and subsequent regulatory investigation appears to support contraventions of section 165(1), 167(1) and 174 of the *Law*.

Potential Compliance Actions

21. 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 any offences are 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*; or
 - 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*.

Right of response

22. As mentioned previously, this is the Provider’s 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.

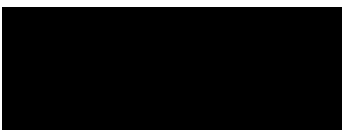
23. At Attachment E to this Notice is a '4 Step Guide to Responding to a Show Cause Notice to assist in the development of your submission. Please direct your written submission via email to Jarrod.Reid@act.gov.au or by post to:

Jarrold REID
Children's Education and Care Assurance
Attention: Nicole Withers
GPO Box 158, Canberra ACT 2601.

Caution

24. 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*.
25. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
26. 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.
27. 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>.
28. 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 Show Cause Notice please contact Authorised Officer Jarrold REID at Jarrod.Reid@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

02 December 2024