

Grounds for issuing Show Cause Notice

6. The evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a) Failure to adequately supervise children at all times; and
 - b) Failure to protect children by taking reasonable precautions; and
 - c) Failure to ensure adequate staffing arrangements.

Allegations

7. The following allegations of suspected offences under the *Law* are engaged by the evidence obtained via enquiries with the Provider:

Allegation One - Failure to protect children by taking reasonable precautions

It is alleged that, on 8 December 2022, the Provider failed to take reasonable steps to protect a child from harms and hazards likely to cause illness, in that an educator was expected to remain working directly with children even though they displayed symptoms of gastroenteritis, in contravention of section 167(1) of the *Law*.

Allegation Two - Failure to ensure adequate staffing arrangements

It is alleged that, on 8 December 2022 the Provider failed to ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations, in contravention of section 169(2) of the *Law*.

Allegation Three – Failure to ensure adequate supervision of all children at all times

It is alleged that, on 8 December 2022, the Provider failed to 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, in contravention of section 165(1)) of the *Law*.

Legislation Relevant to Allegations

8. The following sections of the *Law* and *Regulation* are engaged by the evidence obtained via enquiries with the Provider:

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: \$10 000, in the case of an individual
\$50 000, 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 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 169(2) of the Law - Offence relating to staffing arrangements

The Approved Provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

126 Centre-based services—general educator qualifications

- (1) The qualification requirements for educators at a centre-based service educating and caring for children preschool age or under are as follows—
- (a) at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and
 - (b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.
- (1A) The qualification requirements in subregulation (1)(b) do not apply to an educator if the educator has been employed by an approved provider on a probationary basis for not more than 3 months, at one or more centre-based services operated by the approved provider.
- (1B) Subregulation (1A) does not apply in relation to New South Wales.
- (2) The qualification requirements for educators at a centre-based service educating and caring for children over preschool age in a jurisdiction are the qualification requirements (if any) set out in Chapter 7 for that jurisdiction.
- (3) If Division 5 requires an early childhood teacher to be in attendance at a centre-based service, that teacher, or a person taken to be an early childhood teacher under regulation 135(1), is to be counted as meeting the requirements of subregulation (1)(a).
- (4) If Division 5 requires a second early childhood teacher or a suitably qualified person to be in attendance at a centre-based service, that person, or a person taken to be a second early childhood teacher or a suitably qualified person under regulation 135(2), is to be counted as meeting the requirements of subregulation (1)(a).

Notes—

1 - Meaning of *actively working towards*—see regulation 10.

2 - An early childhood teacher or a suitably qualified person can be included in determining the number of educators who have an approved diploma level education and

care qualification if the early childhood teacher or suitably qualified person is working directly with children.

Evidence Relevant to Allegation One

9. On 8 December 2022, the Authority received three separate direct complaints alleging that an educator had advised parents of children attending the Service that they were suffering from gastroenteritis but had to remain at the Service and work due to staff shortages.
10. On 9 December 2022, the Authority received a notification of complaint relating to the operation of the Service. Allegations were raised regarding a staff member being made to work with gastroenteritis and that this put children attending the Service at risk of illness. Refer Attachment A for documentation relevant to the notification.
11. Due to the risk to children if inadequately supervised and exposed to harms and hazards, the Authority determined to make further enquiries with the Provider on 16 December 2022. Additional information was submitted by the Provider in response to enquiries on 20 December 2022. Refer copy of relevant correspondence at Attachment B.

Contravention supported by Allegation One

12. Relevant evidence gathered via the Authority's enquiries appear to support a contravention of section 167(1) the *Law*.

Evidence Relevant to Allegation Two

13. The Authority performed an analysis of ratio requirements, utilising records submitted by the Provider on 20 December 2022.
14. Analysis indicated that minimum regulated ratio requirements were being maintained on the day across the service, in compliance with section 169(1) of the *Law*, however the analysis indicates that qualification requirements were not appearing to have been always met on 8 December 2022.
15. This analysis indicated that, specifically between 12:45pm and 3:45pm, at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service did not hold, or be actively working towards, at least an approved diploma level education and care qualification.

Refer copy of analysis at Attachment C.

Contravention supported by Allegation Two

16. Relevant evidence gathered via the Authority's enquiries appear to support a contravention of section 169(2) the *Law*.

Evidence Relevant to Allegation Three

17. The Authority performed an analysis of ratio requirements, utilising records submitted by the Provider on 20 December 2022.
18. Analysis indicated that minimum regulated ratio requirements were being maintained on 8 December 2022 across the service, in compliance with section 169(1) of the *Law*. However the analysis indicates that at times there appeared to more children than could be adequately supervised by the number of educators engaged in the rooms at specific times of the day.
19. This analysis indicated that, specifically between 1pm and 3pm, there was only one educator working directly with and supervising up to 18 pre-schoolers.
20. In addition, between 3pm and 4pm the same educator was supervising between 14 and 17 pre-schoolers at any given time on their own.

Refer copy of analysis at Attachment C.

Contravention supported by Allegation Three

21. Relevant evidence gathered via the Authority's enquiries appear to support a contravention of section 165(1) of the *Law*.

Potential Compliance Action

22. 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;
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
 - d. Conditions on Service Approval under section 55 of the *Law*.
23. In arriving at a decision concerning compliance action the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
24. 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 as a result of the investigation.

25. 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 decision-making process. Alternatively (or additionally), the Authority may place a condition on the Service Approval to address the specific non-compliance identified as a result of the investigation.

Right of response

26. As mentioned previously, this letter 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.
27. At Attachment D 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 janine.fairburn@act.gov.au or by post to:

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

Caution

28. 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.
29. 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>.
30. 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>
31. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn via email janine.fairburn@act.gov.au.

Yours sincerely



Jo Williams
Director Children's Education and Care Assurance
Education and Care Regulation and Support

10 February 2023