



██████████
Person with Management or Control
Capital Region Community Service Limited
RE: Bruce Ridge Early Childhood Centre

Email: ██████████@crccs.com.au

Dear ██████████,

Show Cause Notice – Potential Compliance Action

1. As you may be aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, are investigating suspected offences under the *Education and Care Services National Law (ACT)* (the *Law*) relating to the operation of Bruce Ridge Early Childhood Centre SE-00009755 (the Service) operated by Capital Region Community Service Limited PR-00005807 (the Provider).
2. 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.
3. The Authority has determined that there is sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*. However, the Authority’s final determinations will not be made until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
4. The Authority is considering compliance action based on suspected contraventions of the *Law* and *Regulations*. If substantiated, the allegations may constitute offences under sections 167(1) and 170(2) of the *Law* (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required.
5. If any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate 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

6. The evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a. Failure to protect children by taking reasonable precautions; and

- b. Failure to ensure an unauthorised person did not remain at the Service premises while children are being educated at the premises.

Allegations:

Allegation One

It is alleged the Provider failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service, in that an educator known as [REDACTED] was working directly with children on 11 April 2022 without a current Working with Vulnerable People (WWVP) registration in contravention of section 167(1).

Allegation Two

It is alleged that the Provider failed to ensure an unauthorised person did not remain at the Service while children were being educated and cared for by the Service, in that an educator known as [REDACTED] was working directly with children on 11 April 2022 without a current WWVP registration, in contravention of section 170(2).

Legislation 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 170(2) of the Law - Offence relating to unauthorised persons on education and care service premises

The approved provider of the education and care service must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless—

- a) the person is an authorised person; or
- b) the person is under the direct supervision of an educator or other staff member of the service.

Penalty: \$1 000, in the case of an individual
\$5 000, in any other case.

In this section—

authorised person means a person who is—

- (a) a person who holds a current working with children check or working with children card

Evidence Relevant to Allegation One and Two

7. On 14 April 2022, a notification of complaint (NOT-40691936) was received by the Authority advising of a parent complaint alleging that their child, [REDACTED] was inadequately supervised, contributing to [REDACTED] being able to ingest enough paint that she had a cough, sore throat and coloured diarrhea on 11 April 2022. Refer copy of notification at Attachment A.

8. On 20 April 2022, the Provider, in response to additional information requested relevant to NOT-40691936, submitted working directly with children records and child attendance records for 11 April 2022.
9. On 4 May 2022, a notice, allowable under section 215 of the *Law* (215 Notice), was sent to the Provider. The Provider responded to required information on 11 May 2022, with submission of the following:
 - a) Educator/staff records, including all documents and information required by Regulation 147 for all educators working at the service on 11 April 2022;
 - b) In addition to staff and nominated supervisor records we require their personal emails, personal telephone contact details and a copy (in colour) of their Working with Vulnerable People (WWVP) registration cards;
 - c) Record of responsible person/s at the service on 11 April 2022 as required by Regulation 150;
 - d) Supervision policies, procedures and plans in effect on 11 April 2022;
 - e) Any risk assessment in place for painting activities by children under 2 years;
 - f) Programming on 11 April 2022 including the times of the activities.
10. While assessing the Provider's response to the 215 Notice, the Authority noted that one educator, [REDACTED] [REDACTED] [REDACTED] did not appear to have a current and valid WWVP registration between February 2022 and May 2022.
11. Specifically, employee documentation supported that [REDACTED]'s WWVP registration had expired on 1 February 2022, and that a new WWVP registration was not applied for until 5 May 2022. Refer to [Attachment B](#) for documents relevant to [REDACTED] [REDACTED]
12. In addition, working directly with children records supplied for 11 April 2022 supported that [REDACTED] was employed as a Responsible Person and working directly with children between February 2022 and May 2022. Refer to [Attachment C](#) for documents relevant to [REDACTED] [REDACTED] engagement as a Responsible person and an educator on 11 April 2022.
13. On 25 May 2022, the Nominated Supervisor provided the Service's Risk Assessment for instances where WWVP cards/registrations are lost, expired, or getting renewed.
14. The Authority was advised that there was no WWVP registration extension letter issued by Access Canberra in relation to [REDACTED], and the Service's Risk Assessment to mitigate risk of WWVP expiry oversights was not implemented by the Provider until 11 May 2022. Refer to [Attachment D](#) for relevant documents.

Contravention supported by Allegation One and Two

15. Evidence gathered appears to support an educator, known as [REDACTED], was working directly with children on 11 April 2022 without a current working with vulnerable people registration and therefore falling into scope of an unauthorised person, engaging contraventions of section 167(1) and 170(2) of the *Law*.

Potential Compliance Action

16. 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*.
17. 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. 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.
18. 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. 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

19. 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.
20. 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 Vittorio.Colosimo@act.gov.au or by post to

Children's Education and Care Assurance
Attention - Vittorio Colosimo
GPO Box 158, Canberra ACT 2601.

Caution

21. 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>.

22. 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>
23. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
24. Should you have any questions about this Show Cause Notice please contact Senior Investigator Vittorio Colosimo, on telephone (02) 6207 1739 or email Vittorio.Colosimo@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

25 July 2022