



Mr [REDACTED]
Person with Management and Control
Think Childcare Services Pty Ltd
T/A Nido Early School Amaroo
PO Box 465
DRUMMOYNE NSW 1470

Email: [REDACTED]

Dear Mr [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated complaints alleging that the safety, health and wellbeing of children was compromised at Nido Early School Amaroo SE-40007033 (the Service), operated by Think Childcare Services Pty Ltd PR-400000153 (the Provider).
2. Electronic links 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.
3. I am considering compliance action based on various contraventions of the Law and Regulations supported by evidence obtained during an investigation into complaints alleging that supervision and staffing at the Service was not meeting the requirements under the Law and Regulations. As a delegate of the Authority, I am considering compliance action under Part 7 of the Law.

Grounds for issuing Show Cause for Compliance Action

4. On 1 May 2020, the Authority received a complaint from a parent at the Service alleging that during the period 20 April 2020 to 24 April 2020 (inclusive), the Service appeared to be educating and caring for children without the minimum number of educators prescribed by Regulations.
5. Due to the reported risk of children being exposed to harms and hazards when inadequately supervised, the Authority conducted an investigation.
6. The investigation is now complete, and the Authority is considering compliance action based on evidence gathered which indicates that there have been contraventions of the Law and

Regulations. Specifically, the evidence obtained during the investigation suggests one set of grounds that engages offences.

7. The set of grounds relates to staffing arrangements, supervision and protecting children from harm or hazard.

Set of grounds – Staffing and Supervision

Allegation

8. It is alleged that, during the period 20 April 2020 to 24 April 2020 (inclusive), Nido Early School Amaroo SE-40007033 (the Service) operated by Think Childcare Services Pty Ltd PR-40000153 (the Provider) failed to ensure adequate staffing arrangements at all times children were being educated and cared for at the Service, in contravention of section 169(1) of the *Law*, engaging further offences of inadequate supervision in contravention of section 165(1), and failure to take reasonable precautions to protect children from harm and from hazards, in contravention of section 167(1).

Relevant Legislative Provisions

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(1) of the *Law* - Offence relating to staffing arrangements

An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by a service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

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

Regulation 123(1) – Educator to child ratios – centre-based services

The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios -

- a) For children from birth to 24 months of age – 1 educator to 4 children;
- b) For children over 24 months and less than 36 months of age – 1 educator to 5 children;

- c) For children aged 36 months of age or over (not including children over preschool age) – 1 educator to 11 children;
- d) For children over preschool age in a jurisdiction, the relevant ratio (if any) set out in Chapter 7 for that jurisdiction.

Regulation 122 –Educators must be working directly with children to be included in ratios

An educator cannot be included in calculating the educator to child ratio of a centre-based service unless the educator is working directly with children at the service.

Regulation 13 – Meaning of *working directly with children*

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

Relevant Evidence

9. The complaint received stated:

On 20 Apr I noticed it in the Toddler area when collecting my child at approx. 1500. There appeared to be a lot of children with 1 educator only present when I know the ratio is 1 to 5.

I confirmed my suspicion during the days following (through the fence prior to collecting my child) with up to 10 children with 1 educator outside.

- 10. On 21 May 2020, the Authority issued the Provider with a section 215 Notice (s215 Notice) allowable under the *Law*.
- 11. On 4 June 2020, the Provider responded with the requested documents. Due to the size of the material, this response has not been annexed to this Notice, however it can be furnished upon request.
- 12. Utilising working directly with children records and child attendance records, a ratio analysis was then undertaken for the period 20 – 24 April 2020. Refer Attachment A.
- 13. This ratio analysis indicated:
 - i. 20th April 2020
 - a) Some periods during which staffing levels in the Toddler rooms appeared to be below prescribed minimum ratio, as indicated on Attachment A, such as one educator with nine children between 3:30 and 4:00pm; and
 - b) Some minor inaccuracies with the Working Directly with Children Records, such as educators in Toddler 1 not signing out, as indicated on Attachment A.

ii. 21st April 2020

- a) Some periods during which staffing levels in the Nursery and Toddler rooms appeared to be below prescribed minimum ratio, as indicated on Attachment A, such as two educators with 13 children in the Toddler rooms between 9:00 and 9:30am, and one educator with six children in the Nursery rooms between 1:45 and 2:30pm;
- b) A total of 45 minutes during which the Service appeared to have one educator fewer than the prescribed minimum required to be working directly with children;
- c) Minor inaccuracy in Working Directly with Children Records with a Nursery educator not signing out as indicated on Attachment A.

iii. 22nd April 2020

- a) Periods during which staffing levels in all rooms appeared to be below prescribed minimum ratio, as indicated on Attachment A, such as three educators with 18 children in the Toddler rooms;
- b) Service appeared out-of-ratio, under the roof, for most of the day, having up to three educators fewer than the prescribed minimum required to be working directly with children; and
- c) Minor inaccuracy with the Working Directly with Children Records with a Kinder educator not signing out.

iv. 23rd April 2020

- a) Some periods during which staffing levels in the Nursery and Toddler rooms appeared to be below prescribed minimum ratio, as indicated on Attachment A, such as two educators with 12 children in the Toddler rooms between 11:30am and 12:15pm, and two educators with nine children in the Nursery rooms between 12:45 and 1:30pm;
- b) Minor inaccuracy with the Working Directly with Children Records with a Toddler educator not signing out as indicated on Attachment A.

v. 24th April 2020

- a) Some periods during which staffing levels in all rooms appeared to be below prescribed minimum ratio, as indicated on Attachment A, such as one educator with eight children in Nursery rooms between 11:00am and 12:30pm, and one educator with 11 children in Toddler rooms between 10:30 and 11:00am;
- b) Service appeared out-of-ratio, under the roof, for 3.75 hours, having up to two educators fewer than the prescribed minimum required to be working directly with children; and
- c) Some minor inaccuracy with the Working Directly with Children Records such as an educator signed in two rooms at the same time, as indicated on Attachment A.

15. Excerpts from Witness B’s statement are included below:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contraventions Engaged by Allegation

16. Evidence gathered relevant to the Allegation includes documentation provided under a s215 Notice, witness statements, and a complainant account of witnessing rooms at the Service being out of ratio; which appears to be corroborated by an analysis of records obtained from the Provider.
17. Although the witness statements obtained may not support the allegation, the complaint was supported by analysis of prescribed records, which appear to support the following contraventions of the *Law* by the Provider:
- a) Failing to ensure adequate staffing arrangements at all times during which the Service was educating and caring for children during the period 20 April 2020 to 24 April 2020 (inclusive), in contravention of section 169 of the *Law*;
 - b) Failing to ensure adequate supervision of all children being educated and cared for by the Service during the period 20 April 2020 to 24 April 2020 (inclusive), in contravention of section 165 of the *Law*;
 - c) Failing to take reasonable precautions to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury during the period 20 April 2020 to 24 April 2020 (inclusive), in contravention of section 167 of the *Law*.

Proposed compliance action

18. The compliance action that the Authority is proposing:

Section 177 of the *Law* - Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this *Law*.
- (2) The Regulatory Authority may give the approved provider a notice (a compliance notice) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Right of response

19. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
20. At Attachment B 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 at jeffrey.beaver@act.gov.au, or by post to Children's Education and Care Assurance, attention to Jeffrey Beaver, GPO Box 158, Canberra ACT 2601.

Caution

21. 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 excerpt provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
22. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
23. 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.
24. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
25. The National Law is made up of an Act and Regulations which can be viewed at:
- <http://www.acecqa.gov.au/national-law>; and
 - <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
26. Should you have any questions about this Show Cause Notice please contact Jeffrey Beaver on telephone (02) 6207 3917 or email jeffrey.beaver@act.gov.au.

Yours Sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

24 August 2020