

██████████
Person with Management or Control
FEL Child Care Centres 4 Pty Ltd
T/A Springbank Rise by Busy Bees

Email: ██████████

Dear ██████████

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 conducted a risk audit based on complaints alleging that the health, safety and wellbeing of children was compromised at Springbank Rise by Busy Bees SE-40004390 (the Service), operated by FEL Child Care Centres 4 Pty Ltd PR-40004076 (the Provider).
2. Web addresses to the *Education and Care Services National Law Act 2010*¹ (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 suspected contraventions of the *Law* and the *Regulations* arising from the risk audit (Audit) and prescribed records provided to the Authority, regarding a complaint of inadequate staffing and supervision, and failure to take reasonable precautions to protect children from harm and from hazard. As a delegate of the Authority, I am considering compliance action under Parts 3 or 7 of the *Law*.

Grounds for issuing Show Cause for Compliance Action

4. The Authority is considering compliance action based on evidence that supports contraventions of the *Law* arising from the Authority's risk audit. Specifically, the evidence obtained on 23 July 2020 and provided via email on 27 July 2020, suggests two sets of grounds that support offences under the *Law*.
5. The first set of grounds relates to supervision of children, staffing arrangements and protecting children from harm or hazards. The second set of grounds relates to failure to maintain prescribed records.

¹ Adopted in the ACT under the *Education and Care Services National Law (ACT) Act 2011*

Background

6. On 14 July 2020, the Authority received a direct complaint in relation to inadequate staffing, that the ratio requirements are not being met within rooms.
7. Authorised Officers entered the Service on 23 July 2020, exercising powers under sections 197 of the Law. Authorised Officers observed staff and took photographs of prescribed records, including working directly with children records. Ref Attachment A
8. Due to the specific circumstances on arrival at the service, Authorised Officers discussed with the Nominated Supervisor alternatives to reduce the duration of the visit, resulting in an agreement that further documentation would be provided to the Authority by email on 27 July 2020, for the period from 8 July 2020 to 15 July 2020.
9. Documents received by email on 27 July 2020 (Attachment B), included:
 - a. Staffing Policy;
 - b. Staff Rosters;
 - c. Responsible Person Record;
 - d. Working Directly with Children Records;
 - e. Children attendance records by room; and
 - f. Ratio Check records.
10. Analysis of staffing levels was attempted with records obtained at the risk audit, however working directly with children records were not sufficiently accurate or complete to enable meaningful analysis.
11. An analysis of staffing was conducted with records provided by email for the periods 8 July, 10 July and 14 July 2020, however, working directly with children records were not sufficiently accurate or complete to enable meaningful analysis.
12. On 29 July 2020, the Authority received a further complaint of inadequate staffing, supervision and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury. It was determined that the complaint be amalgamated into the existing case.

First set of grounds –staffing and supervision arrangements

Allegation One – Inadequate staffing between 8 July 2020 and 15 July 2020

13. It is alleged that, between 8 July 2020 and 15 July 2020 (inclusive) the Provider failed to ensure adequate staffing in contravention of section 169(1) of the *Law* (engaging an offence of inadequate supervision under section 165(1) and failure to take reasonable precautions to protect children from harm and hazards likely to cause injury under section 167(1) of the *Law*.
14. Note that inadequate staffing has also been raised by the Authority previously, regarding Busy Bees at Oxley. Staffing breaches relating to that service have not been considered as part of this Show Cause Notice (Notice).

Legislation Relevant to Allegation One

15. The following provisions of the *Law* and *Regulations* are relevant to Allegation One:

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) and (2) –Educator to child ratio-centre – based service

- (1) 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, 1 educator to 15 children.
- (2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

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.

Evidence Relevant to Allegation One

16. The initial direct complaint received on 14 July 2020 stated:

- a. Yes, we (our staff) complained many times regarding the lack of staff and out of ratio. But the service manager did not solve the problem. Most of the time we have to deal with it. And sometimes, he would just say, a small number or amount of children over ratio is fine and acceptable. And sometimes he would say, the ratio is across the whole service, just not a particular room.*

17. As previously raised in paragraph seven of this Notice, Authorised Officers attended the service on 23 July 2020 and obtained relevant evidence. A copy of the Audit is attached and marked Attachment C. It was identified that ratio check records identified that rooms were not meeting the minimum number of educators to adequately care for and support individual children's needs.
18. On 27 July 2020, the service provided documents as agreed in paragraph eight. It was identified that working directly with children (WDWC) records were incomplete and attendance of children documented within WDWC records did not correlate with attendance records. Records identified that rooms were not meeting the minimum number of educators to meet the required ratios and adequately care for children.
19. Utilising child attendance records and working directly with children (WDWC) records provided by the Service from 8 July 2020 to 15 July 2020, a ratio analysis was carried out on 8, 10 and 14 July 2020. A copy of the ratio analysis is attached and marked Attachment D.
20. The ratio analysis indicated
 - a. Wednesday 8 July 2020 – minor anomalies between 12 noon and 12:30pm and significant periods of hours during which the Service had up to five educators fewer than the prescribed minimum;
 - b. Friday 10 July 2020 – minor anomalies between 3:30pm and 4pm;
 - c. Tuesday 14 July 2020 – significant periods of hours during which the Service had up to four educators fewer than the prescribed minimum.

Contraventions Supported by Allegation One

21. Evidence gathered appears to support the following contraventions of the *Law* by the Provider:
 - (a) Failing to ensure adequate staffing arrangements at all times that the Service was educating and caring for children on 8, 10 and 14 July 2020, in contravention of section 169(1) of the *Law*;
 - (b) Failing to ensure adequate supervision of all children being educated and cared for by the Service at all times on 8, 10 and 14 July 2020, in contravention of section 165(1) 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 on 8, 10 and 14 July 2020, in contravention of section 167(1) of the *Law*.

Second set of grounds – failure to maintain prescribed records

Allegation Two – Inaccurate WDWC records

22. It is alleged that the Provider failed to maintain a prescribed record, being working directly with children records Attachment E, in contravention of Regulation 177(2).

Legislation Relevant to Allegation Two

Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –
- (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151.
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Penalty: \$2000.

Regulation 151 – Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information:

- (a) The name of each educator who works directly with children being educated and cared for by the service;
- (b) The hours that each educator works directly with children being educated and cared for by the service.

Evidence Relevant to Allegation Two

23. On 27 July 2020, the service provided documents as agreed in paragraph eight. It was identified that working directly with children (WDWC) records were incomplete. Ref Attachment E.

Contravention Supported by Allegation Two

24. Evidence gathered appears to support a contravention of Regulation 177(2) in that the Provider has not taken reasonable steps to ensure WDWC records are accurate, producing incomplete records to the Authority.

Proposed Compliance Action

25. The Authority is proposing compliance action Part 3 or Part 7 of the *Law*, should the Authority find that any or all of Allegations One to Two are substantiated on the balance of probabilities. Potential compliance actions include:
- a. Amendment of the Service Approval under section 55 of the *Law* to impose an appropriate condition;
 - b. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*;
 - c. Non-statutory action.

Right of response

26. You have a right to respond to the allegations set out in this notice. You may, within 30 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
27. At Attachment F 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 nicola.atherton@act.gov.au or by post to Children's Education and Care Assurance, Attention Jo Williams, GPO Box 158, Canberra ACT 2601.

Caution

28. I am informing you that the excerpts of complaints are included in the interests of procedural fairness. Information disclosed to the Authority under a reasonable belief that an offence against the *Law* has been or is being committed, or that the safety, health or wellbeing of a child or children is at risk, is a protected disclosure under section 296 of the *Law*.
29. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
30. 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.

31. 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>.
32. 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>
33. Should you have any questions about this Show Cause Notice please don't hesitate to contact me on (02) 620 50615 or email Clare.Brookes@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director,
Early Childhood Policy and Regulation
ACT Education Directorate

11 September 2020