

[REDACTED]
Person with Management and Control
Think Childcare Services Pty Ltd
RE: Nido Early School Amaroo
[REDACTED]
[REDACTED]

Email: [REDACTED]
[REDACTED]

Dear [REDACTED]

Show Cause Notice for Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated a complaint that the *Education and Care Services National Law (ACT)* (the *Law*) was contravened at Nido Early School Franklin SE-40015950 (the Service), operated by Think Childcare Services Pty Ltd PR-400000153 (the Provider).
2. Web addresses to the *Education and Care Services National Law Act (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 suspected contraventions of the *Law* and *Regulations* supported by evidence obtained during an investigation into a complaint 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 26 May 2020, the Authority received a complaint from an educator alleging that, during the period between 19 May to 22 May 2020 (inclusive), children being educated and cared for by the Service were not being supervised as prescribed by *Law* and *Regulations*, including an incident of a child left unsupervised in a cot room for a period of twenty-minutes.
5. Due to the 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*. Although the allegation of a child left unsupervised in a cot room was not supported by witnesses, evidence obtained during the investigation supported one set of grounds that may engage offences.
7. The set of grounds relate to staffing, supervision and protecting children from harm or hazard.

Set of grounds – Staffing Supervision, and Protection from Harm or Hazard

Allegation

8. It is alleged that, during the period 19 May 2020 to 22 May 2020 (inclusive), 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*, which engage offences under sections 165(1) and section 167(1) of the *Law*.

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.

Relevant Evidence

9. On 18 June 2020, the Authority issued the Provider with a notice allowable under section 215 of the *Law* (s215 Notice). On 3 July 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.

10. Utilising Working Directly with Children (WDWC) Records and Child Attendance records provided in response to the s215 Notice, a ratio analysis was then undertaken for the period 19 – 22 May 2020. Refer Attachment A.
11. This ratio analysis identified the following anomalies for dates as follows:

19 May 2020

Service appears not to be meeting minimum regulated ratio levels between 4.15pm and 5.15pm with up to two fewer educators than prescribed under the regulations.

21 May 2020

Service appears not to be meeting minimum regulated ratio levels between 4.45pm and 5.45pm with up to three fewer educators than prescribed by the regulations.

22 May 2020

Service appears not to be meeting minimum regulated ratio levels between 4.45pm and 5.45pm with up to two fewer educators than prescribed by the regulations.

Contraventions Engaged by Allegation

13. Overall, evidence gathered relevant to the Allegation appears to support the following contraventions of the *Law* by the Provider:
- a) Failing to ensure adequate staffing at all times when children were being educated and cared for by the Service on 19, 21 and 22 May 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 on the 19,21, and22 May 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 the 19,21, and 22 May 2020, in contravention of section 167(1) of the *Law*.

Proposed compliance action

14. The compliance action that the Authority is proposing is a compliance notice:

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

15. 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.
16. 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 brian.cropper@act.gov.au, or by post to Children's Education and Care Assurance, attention to Jeffrey Beaver, GPO Box 158, Canberra ACT 2601.

Caution

17. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
18. 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.
19. 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>.
20. 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>
21. Should you have any questions about this Show Cause Notice please contact Brian Cropper on telephone (02) 620 71104 or email brian.cropper@act.gov.au.

Yours Sincerely



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

17 September 2020