

[REDACTED]
Cherry Tree Family Day Care
[REDACTED]
[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

DECISION NOTICE TO ISSUE CANCELLATION OF SERVICE APPROVAL
Section 79, *Education and Care Services National Law (ACT) Act 2011*

1. I am satisfied that Cherry Tree Family Day Care SE-40015126, is not complying with the provisions of the *Education and Care Services National Law (ACT) Act 2011* (the *National Law*) and the *Education and Care Services National Regulations* (the *National Regulations*).
2. I have decided to cancel the service approval under section 77 of the *National Law* from **2 September 2022**.

Facts

3. The provider approval for Cherry Tree Family Day Care, PR-40017886, was granted 20 December 2018. A copy of the provider approval is at **Attachment A**.
4. It is a condition of the provider approval that you must comply with the provisions of the *National Law*.
5. The service approval for Cherry Tree Family Day Care SE-40015126, was granted on 16 July 2019. A copy of the service approval is at **Attachment B**.
6. An application from the provider to voluntarily suspend the service approval for Cherry Tree Family Day Care was received by the Regulatory Authority on 25th March 2021. The Regulatory Authority approved the voluntary suspension on 26th March 2021, and a letter was sent to the provider notifying them of the outcome. **Attachment C**.
7. Section 85 of *the Law* states that a voluntary suspension cannot exceed 12 months. The provider failed to notify the Regulatory Authority of the intention to resume operation of the service under service approval SE-40015126 or of the intention to surrender the service approval by the end of the 12 months of voluntary suspension.
8. An email was sent by the Regulatory Authority to the provider on 12 June 2020 requesting the provider to inform the Regulatory Authority of its intention to either

resume operation of the service or surrender the service approval. No response was received.

9. Between October 2019 and September 2020, the Authority contacted the provider to enquire about commencement of operation of the service. Each time the provider notified the Authority that the service was yet to commence operating. The Authority granted, on three occasions, more time for the provider to start the service operation. The last extension was given in September 2020 for three months due to the ongoing Health Emergency related to Covid-19.
10. An email was sent by the Regulatory Authority to the provider on 12th April 2022 requesting the provider to inform the Regulatory Authority of its intention to either resume operation of the service or surrender the service approval. No response was received.
11. The provider did not ensure that operation of the service resumed after a voluntary suspension of maximum 12 months. It is a condition of the service approval that the service is operating if there is no suspension in place.
12. A show cause notice proposing the cancellation of the service approval was emailed to the Provider on 8th June 2022. **Attachment D**.

No response has been received by the Regulatory Authority in the prescribed timeframe stated in the show cause notice.

Law

13. It is a condition of the provider approval that you must comply with the provisions of the *National Law* and the *National Regulations*.
14. The full text of the *National Law* can be found at:
<http://www.legislation.act.gov.au/a/2011-42/default.asp>
15. The following provisions of the *National Law* were engaged:

Section 51 of the National Law - Conditions on service approval

(3) A service approval is granted subject to a condition that the service must commence ongoing operation of the service within 6 months after the approval is granted unless the Regulatory Authority agrees to an extension of time.

Section 77 of the National Law - Grounds for cancellation of service approval

A Regulatory Authority may cancel a service approval if -

- (d) a condition of the service approval has not been complied with.

Reasons

16. The provider approval for Cherry Tree Family Day Care, PR-40017886, was granted on 12 December 2018.
17. It is a statutory condition of the provider approval under Section 19 of the *National Law* that you must comply with the provisions of the *National Law* and *National Regulations*.

18. The service approval for Cherry Tree Family Day Care SE-40015126, was granted on 16 July 2019.
19. A service approval is granted by the Regulatory Authority subject to statutory conditions under Section 51 of the *National Law*, being placed on the service approval.
20. An application from the provider to voluntarily suspend the service approval for Cherry Tree Family Day Care was received by the Regulatory Authority on 25th March 2021. The Regulatory Authority approved the voluntary suspension on 26th March 2021, and a letter was sent to the provider notifying them of the outcome.
21. Section 85 of *the Law* states that a voluntary suspension cannot exceed 12 months. The provider failed to notify the Regulatory Authority of the intention to resume operation of the service under service approval SE-40015126 or of the intention to surrender the service approval by the end of the 12 months of voluntary suspension.
22. An email was sent by the Regulatory Authority to the provider on 12th June 2020 requesting the provider to inform the Regulatory Authority of its intention to either resume operation of the service or surrender the service approval. No response was received.
23. Between October 2019 and September 2020, the Authority contacted the provider to enquire about commencement of operation of the service. Each time the provider notified the Authority that the service was yet to commence operating. The Authority granted, on three occasions, more time for the provider to start the service operation. The last extension was given in September 2020 for three months due to the ongoing Health Emergency related to Covid-19.
24. An email was sent by the Regulatory Authority to the provider on 12th April 2021 requesting the provider to inform the Regulatory Authority of its intention to either resume operation of the service or surrender the service approval. No response was received.
25. The provider did not ensure that operation of the service resumed after a voluntary suspension of maximum 12 months. It is a condition of the service approval that the service is operating if there is no suspension in place.
26. A show cause notice proposing the cancellation of the service approval was emailed to the Provider on 8th June 2022. No response has been received by the Regulatory Authority in the prescribed timeframe stated in the show cause notice.
27. Section 77 of the *National Law* identifies that the Regulatory Authority has grounds to cancel a service approval if the service has been suspended under section 72 or 73 and the reason for the suspension has not been rectified at or before the end of the period of suspension.
28. As the service has not commenced operation of the service, the Authority has grounds to cancel the service approval.

29. Consequently, I have determined that it is appropriate to cancel the service approval for Cherry Tree Family Day Care, SE-40015126.
30. Based on the evidence before me, I am satisfied that you were aware of your obligations as a provider and that you have not taken the required steps to meet these obligations. I am satisfied that the evidence warrants me to issue this cancellation of service approval.
31. As stated in the accompanying *Notice of Cancellation of Service Approval*, your approval will be cancelled from 14 days from the date of this notice.
32. If you have any questions about this notice, please contact Delphine Coutin at delphine.coutin@act.gov.au or on 6207 1114.



Delphine Coutin
Assistant Director, Audit and Risk Management
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

19 August 2022