

[REDACTED]
Person with Management or Control
Projects on Parkinson Ltd
RE: Weston Creek Children's Centre

Email: [REDACTED]
[REDACTED]

Dear [REDACTED]

Decision to Issue Administrative Action

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated suspected offences relating to alleged conduct of previous Centre Director, [REDACTED], and relating to the operation of Weston Creek Children's Centre SE-00009856 (the Service) operated by Projects on Parkinson Ltd PR-40011926 (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law). Web addresses to the Law and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this decision.

Facts

3. On 26 February 2021, the Authority received advice from ACT Policing alleging that the Centre Director at the Service had been arrested and charged for multiple counts of obtaining property by deception, being funds from the Provider's accounts meant for the ongoing operation of the Service.
4. On 26 February 2021, the Authority contacted the Service, to ensure children were still able to be educated and cared for in compliance with the Law. The Authority also contacted the only other nominated person with management or control (PMC) still identified as current for the Provider, [REDACTED].
5. [REDACTED] advised the Authority that she was no longer a member of the board for the Provider, having resigned 30 June 2020. ASIC records were obtained to confirm/clarify this matter. Additional correspondence was had with [REDACTED] regarding her still being an identified office holder for the Provider.
6. As it was confirmed that [REDACTED] was no longer an office holder, immediate measures were undertaken by the Authority, in liaison with the Services nominated supervisor, [REDACTED], and office/administration manager, [REDACTED] to ensure the ongoing operation of the Service.
7. Due to a reasonable suspicion of an offence of non-notification under the Law, the Authority determined to investigate.

8. On 1 March 2021, additional records were obtained via ASIC. Refer Attachment A.
9. These records indicated that the following persons were office holders for the Provider between 2017 and 2020:
- a) [REDACTED] – ceased as a board member 03/07/2017
 - b) [REDACTED] – appointed 03/07/2017, ceased 24/03/2020
 - c) [REDACTED] – ceased 24/03/2020 [REDACTED] became aware verbally 7/01/2021 that this PMC no longer engaged)
 - d) [REDACTED] – Appointed 24/03/2020
 - e) [REDACTED] – Appointed as Company Director and Secretary 06/06/2017
10. An audit of the ACECQA National Quality Assurance Information Technology System (NQA ITS) identified that no written notifications were submitted by the Provider to the Authority at any time to advise of the appointment or cessation of any known nominated PMC's or board members.

Law

11. Provisions of the *Law* engaged by the investigation are as follows:

Section 173 of Law - Offence to fail to notify certain circumstances to Regulatory Authority.

- (1) An approved provider must notify the Regulatory Authority of the following in relation to the approved provider, or each approved education and care service operated by the approved provider--
- (b) any appointment or removal of a person with management or control of an education and care service operated by the approved provider

174 of Law - Offence to fail to notify certain information to Regulatory Authority

- (1) An approved provider must notify the Regulatory Authority of the following information in relation to the approved provider, or each approved education and care service operated by the approved provider--
- (a) any change relevant to whether the approved provider is a fit and proper person to be involved in the provision of an education and care service;
 - (b) information in respect of any other prescribed matters

Obligations upon Regulatory Authority, Providers and Services

12. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely:

"to ensure the safety, health and wellbeing of children attending education and care services".

13. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular application in this instance, being:

- (a) *that the rights and best interests of the child are paramount; ...*
- (f) *that best practice is expected in the provision of education and care services.*

14. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:

- (c) *to monitor and enforce compliance with this law;*
- (d) *to receive and investigate complaints arising under this law.*

15. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
16. A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
17. The *Law* is predominantly a protective law and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Reasons

18. Having considered all evidence gathered through the investigation, the Authority is satisfied that the Provider has failed to comply with the *Law*.
19. The Authority is satisfied that the Provider has failed to notify the Authority of any appointment or removal of a person with management or control of an education and care service operated by the approved provider, in contravention of section 173(1)(b) of the *Law*.
20. The Authority is satisfied that the Provider has failed to notify the Authority of any change relevant to whether the approved provider is a fit and proper person to be involved in the provision of an education and care service, in contravention of section 174(1)(a) of the *Law*.
21. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
22. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has determined to issue you with this Administrative Action rather than impose any statutory compliance actions.
23. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:
 - a) Evidence does not support an intent to not notify by certain office holders, but rather a non-understanding and awareness of the obligations of the Provider under the *Law*.
 - b) Immediate risk associated to the health, safety and wellbeing of children was low because of the non-compliances identified;
 - c) The Provider and Service's compliance history.
24. Regarding the substantiated offences under sections 165(1) and 167(1) of the *Law*, the Authority is satisfied the subsequent strategies implemented by the Provider will meet the expectations of the Authority, and therefore no further action is required.

25. This Decision will be recorded on your Service file and may be considered in any future applications for approvals, amendments or waivers. It may also be considered in determining the action to be taken should further breaches of the *Law* or *Regulations* be found.

Legislation

26. 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>.
27. 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>
28. If you have any questions in relation to this letter, please contact Authorised Officer Jeff Beaver on (02) 6207 3917 or by email at.jeffrey.beaver@act.gov.au.

Yours sincerely



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

18 June 2021