

Ms [REDACTED]
Person with Management and Control
Goodstart Early Learning Ltd
RE: Goodstart Early Learning Kambah

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Potential Compliance Action

1. As you may be aware, the ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, have recently assessed a Notification of Serious Incident (NOT-40707321) relating to the operation of Goodstart Early Learning Kambah - SE-00009784 (the Service), operated by Goodstart Early Learning Ltd - PR-00001129 (the Provider).
2. Web addresses 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. The Authority has determined that there is sufficient evidence to support a case to answer for the Provider regarding suspected offences under the Law. However, the Authority’s final determinations will not be made until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority.
4. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
5. The Authority is considering compliance action based on suspected contraventions of the Law. If substantiated, the allegations may constitute offences under sections 165(1), 167(1) and 169(1) of the Law (or any combination of them).
6. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
7. If any offences under the Law are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and

improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

8. The evidence obtained during the assessment of NOT-40707321 support offences under the *Law* within the following areas:
 - a) Failure to ensure all children are adequately supervised at all times;
 - b) Failure to ensure adequate staffing arrangements in place;
 - c) Failure to protect children by taking reasonable precautions.

Background to Notification.

9. On 12 May 2022, the Authority received a Notification of Incident (NOT-40707321) relating to an incident occurring 11 May 2022 of a circumstance where an enrolled child, known to be, [REDACTED] (aged 1 year 4months), was unsupervised for a short period of time, and found in the service hallway by her parent. Refer Notification at Attachment A.
10. Furthermore, it was advised that the room's senior educator reports that [REDACTED] was accounted for during the 5:30pm head count and the educator had engaged with [REDACTED] while she was tidying up from playing. The educator reports she moved around the space attending to other children and had noticed [REDACTED] behind her at that time. Between 30 seconds and 1 minute later, [REDACTED] was seen walking back into the play space with her parent. The parent advised that [REDACTED] was unsupervised in the service hallway.
11. Additional information was requested from the Provider by the Authority on 13 May 2022. This request was responded to on 16 May 2022. Refer email correspondence and submitted documents at Attachment B.
12. Additional information included the following:
 - a) Working Directly with Children and Child Attendance records for 11 May 2022;
 - b) Policy and Procedure relating to supervision and staffing arrangements;
 - c) Statements from two educators; and
 - d) Risk assessment and control record.
13. Utilising submitted Working Directly with Children and Child Attendance records for 11 May 2022, the Authority undertook a ratio analysis which identified anomalies with regulated ratio requirements. Refer copy of analysis at Attachment C.

Allegations:

Allegation One – Sections 165, 167 of the Law

It is alleged that on 11 May 2022, the Provider failed to ensure that all children being educated and cared for at the Service, were adequately supervised at all times, contravening s165(1) of the *Law*, and engaging a further contravention of 167(1) of the *Law*.

Allegation Two – Section 169 of the Law

It is alleged that on 11 May 2022, the Provider failed to ensure that the relevant number of educators educating and caring for children was no less than the number prescribed for this purpose under *Regulation 123*, in contravention of section 169(1) of the *Law*.

Evidence Relevant to the Allegation One

14. Information and documentation obtained from the Provider in relation to the assessment of NOT-40707321 indicate the following:
 - a) The Service was educating and caring for children on 11 May 2022
 - b) ██████████ was an enrolled child on 11 May 2022.
 - c) The Provider has stated within the notification of Incident (Attachment A) that no educator saw ██████ leave the room and enter the hallway.

Legislation 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.

Contravention supported by Allegation One

15. Evidence gathered appears to support a contravention of section 165(1) of the *Law*, engaging a further contravention of section 167(1) of said *Law*.

Evidence Relevant to the Allegation Two

16. Information and documentation obtained from the Provider in relation to the assessment of NOT-40707321 indicate the following:
- a) The ratio analysis, conducted by utilising the Provider's Working Directly with Children Records and Child attendance records (Attachment C) indicates that there were multiple blocks of time throughout the day where staffing arrangements did not meet minimum regulated ratio requirements.

Legislations Relevant to Allegation Two

Section 169(1) of the Law - Offence relating to staffing arrangements

The Approved Provider of an education and care service must ensure that every that, whenever children are being educated and cared for by the 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 – Educator to child ratios –centre-based services

- (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.
- (2) If children are 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

- (3) 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 purposes 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.

Contravention supported by Allegation

17. Evidence gathered appears to support a contravention of section 169(1) of the Law.

Potential Compliance Action

18. The Authority reiterates that no decision has been made at this time – this letter is a step in the decision-making process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated. Potential compliance actions include:
 - a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced;
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
19. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified because of the investigation.
20. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process. Alternatively (or additionally), the Authority may place a condition on the Service Approval to address the specific non-compliance identified because of the investigation.

Right of response

21. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
22. At Attachment D 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 janine.fairburn@act.gov.au or by post to

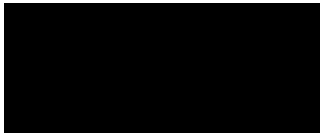
Children's Education and Care Assurance -
Attention: Janine Fairburn
GPO Box 158, Canberra ACT 2601.

Caution

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 *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>.
25. 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>
26. Should you have any questions about this Show Cause Notice please contact Assistant Director Janine Fairburn at Janine.fairburn@act.gov.au.

Yours sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

3 June 2022