

[REDACTED]
Person with Management and Control
Woden Early Childhood Centre Inc
RE: Woden Early Childhood Centre

Email: [REDACTED]
[REDACTED]

Dear [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the *Law*), together with receiving and investigating complaints arising under the *Law*.
2. The Authority has recently assessed a Notification of Incident (NOT-40713057) relating to the operation of Woden Early Childhood Centre, SE-00009858 (the Service), operated by Woden Early Childhood Centre Inc, PR-00005884 (the Provider).
3. 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.
4. The Authority has determined that there is sufficient evidence to support a case to answer for the Provider regarding suspected breaches 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.
5. 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.
6. The Authority is considering compliance action based on suspected contraventions of the *Law*. If substantiated, the allegations may constitute breaches under sections 165(1) and 167(1) of the *Law* (or any combination of them).
7. 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.

8. 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. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

9. The evidence obtained during the assessment of an incident (NOT-40690781) support breaches under the *Law* within the following areas:
 - a) Failure to ensure all children are adequately supervised at all times; and
 - b) Failure to protect children by taking reasonable precautions.

Background to Notification.

10. On 20 May 2022, the Authority received a Notification of Incident (NOT-40713057) relating to an incident occurring 18 May 2022 of a circumstance where an enrolled child, [REDACTED] (aged 3 years), was on excursion and tumbled on the edge of a riverbank, ending up in the water. See the notification and additional documentation at [Attachment A](#).
11. Specifically, at approximately 11:10am on 18 May 2022, during an excursion to a local playground, educators were gathering ten children to sanitise their hands and have a drink of water, when one educator was notified by a member of the community that [REDACTED] was walking towards a shallow riverbed. The educator went to get [REDACTED]. However, just before she got to him [REDACTED] tumbled on the edge of the bank and ended up on top of the reeds in the shallow water. [REDACTED] clothes were wet, and he was comforted by the educator.
12. Additional information was requested from the Provider by the Authority on 23 May 2022. This request was responded to on 25 May 2022 by the Service's Nominated Supervisor. Refer email correspondence at [Attachment B](#).
13. Additional information included the following:
 - a) Working Directly with Children and Child Attendance records for 18 May 2022 ([Attachment C](#));
 - b) Relevant Incident reports ([Attachment D](#));
 - c) Records relating to incidental excursions and risk assessment ([Attachment E](#)); and
 - d) Room Leader meeting minutes for 24 May 2022 ([Attachment F](#)).

Allegations:

14. Allegation One – Sections 165(1) of the *Law*

It is alleged that on 18 May 2022, the Provider failed to ensure that all children being educated and cared for at the Service, were adequately supervised at all times, resulting in [REDACTED] being able to access and fall into water whilst on an excursion to a local playground, contravening s165(1) of the *Law*.

15. Allegation Two – Section 167(1) of the Law

It is alleged that on 18 May 2022, that due to inadequate supervision, and not ensuring additional staffing resources were allocated to supervise and care for children in a higher risk environment, being the local playground, the Provider failed to take reasonable steps to ensure children were protected from harm and hazard likely to cause injury or illness, in contravention of section 167(1) of the Law.

Evidence Relevant to the Allegation One and Allegation Two

16. Information and documentation obtained from the Provider in relation to the assessment of NOT-40713057 indicate the following:

- a) The Service was educating and caring for children on 18 May 2022. An excursion to a local park was undertaken on the day, consisting of ten children aged between 2.9 years and 3.2 years with two educators, known to be [REDACTED].
- b) [REDACTED] was an enrolled child on 18 May 2022, attended the excursion, and was identified as being able to leave educators line of sight/ supervision with sufficient time to access the riverbed and fall in before educators could return him to the main group of children.
- c) The Provider has stated within the notification of Incident (Attachment A) that an educator, known as [REDACTED], was notified by a member of the community that a child was walking towards a shallow riverbed.
- d) Reports of the Incident submitted (Attachment E) indicate that [REDACTED] was retrieving four children who had run away back to the playground, inclusive of [REDACTED], and that [REDACTED] has again ventured away from the direction of this group who were instructed to return to [REDACTED], unnoticed by [REDACTED].
- e) [REDACTED] was not facing the water, but close by, did not see [REDACTED] pass her to enter the water but rather was made aware of his location when she heard a person call out for help. [REDACTED] and the person helped [REDACTED] out of the water – his legs and torso were wet, and he was in the reeds.
- f) With [REDACTED] attending to [REDACTED], this left [REDACTED] to supervise the remaining nine children in attendance.

Legislation Relevant to Allegation One and Two

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 and Allegation Two

17. Evidence gathered appears to support a contravention of section 165(1) of the *Law*, engaging a further contravention of section 167(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. Procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any breaches 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;
 - c. A Compliance Notice under section 177 of the *Law*;
 - d. Conditions imposed on Service Approval under section 55 of the *Law*.
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.
20. 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.
21. 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

22. 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.

23. At Attachment G 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

24. 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.
25. 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>.
26. 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>
27. Should you have any questions about this Show Cause Notice please contact me at
Janine.fairburn@act.gov.au.

Yours sincerely



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

15 June 2022