

## Childcare Insights

### Show Cause Notices issued to childcare providers: do you understand your obligations?

A childcare provider who receives a Show Cause Notice may face potential suspension or cancellation of their service.

In this article, we outline the purpose of a Show Cause Notice, the different instances in which they apply, and how Meridian Lawyers can assist childcare providers to respond.

#### The National Law

The Children (Education and Care Services) National Law (**National Law**) provides applicable State Regulatory Authorities (**RAs**) with the power to suspend or cancel provider and service approvals in certain circumstances.

Section 28 of the National Law gives RAs the power to immediately suspend a provider approval if the RA is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by an education and care service operated by the provider.

However, it is more usual for the RA to issue a Show Cause Notice to the approved provider, before the RA makes a decision whether to suspend or cancel approvals.

Section 25 of the National Law sets out the grounds upon which the RA may suspend a provider's approval. These grounds include where:

- certain offences have been charged against the provider
- the provider has failed to comply with a condition of the provider approval, or failed to comply with the National Law, or
- the provider has not operated any education and care service for a period of more than 12 months.

#### What is a Show Cause Notice?

A Show Cause Notice is a formal letter from the RA setting out their intention to suspend or cancel the provider or service approval, any proposed period of suspension, and the reasons for the proposed suspension or cancellation.

Approved providers have 30 days after the Show Cause Notice is issued to submit a written response addressing the proposed suspension or cancellation, and to persuade the RA to decide against the suspension or cancellation.

Show Cause Notices are typically issued by the RA where serious or repeated non-compliances with the National Law and Education and Care Services National Regulations are alleged, or where there has been a serious incident at an education and care service.

## What instances can lead to a Show Cause Notice being issued?

Examples of instances where Show Cause Notices have been issued include where:

- premises, furniture and equipment are not maintained in good repair, or in a safe and clean condition
- educators have failed to follow the service policies and procedures
- children are not being adequately supervised
- outdoor space is not entirely enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it
- adequate health and hygiene practices are not followed, or safe practices for handling, preparing and storing food are not being observed
- educators cannot demonstrate an adequate awareness of child protection law
- educators have been included in ratios when they were not directly working with children
- medication records are not adequately maintained
- medications and items in first aid kits have passed their expiry date
- children have left a service unnoticed and without one of his or her parents or authorised nominee
- registrations and insurances for vehicles have been allowed to expire
- children have been left unsupervised on service buses
- children have been injured while attending a service (burns, broken limbs).

Sometimes, Show Cause Notices will be issued where one of the more serious allegations has occurred, and at other times, there may be no major serious incident, but a recurring pattern of lower level non-compliance. This results in the RA concluding that the provider or its persons with management and control are no longer fit and proper to be involved in an education and care service.

## Seeking legal advice

Meridian Lawyers represents many approved providers who have been issued with Show Cause Notices. In our experience, it is essential for providers to act immediately upon receipt of a Show Cause Notice, to reflect upon the allegations contained in the notice, and gather evidence to concede or deny the accuracy of the allegations.

We assist approved providers to review the allegations in a systematic way, draft responses, and organise the evidence to deny that the alleged non-compliances took place, or to explain how the non-compliances have

been rectified. We are also able to provide ideas and suggestions about the steps to take to improve standards and utilise systems of management and control in the provision of services.

It may not be enough to simply say that problems have been rectified. The RA will need to be satisfied that changes have been made to prevent non-compliances from happening in the future. Steps that can be taken by a provider may include revising and updating policies and procedures, and training staff on those policies and procedures. It may include embedding a quality management system in which the provider and staff of a service, check and verify that the requirements of the policies and procedures have been followed.

We often see providers who are taking genuine steps to rectify issues at their services, but who have not adequately explained to the RA why issues arose, or how they are going to be prevented in the future.

Our role as childcare lawyers is to communicate with the RA on your behalf, and to ensure that the RA is presented with a clear and persuasive case as to why a suspension or cancellation of a provider or service approval is not the correct or preferable decision to make in all the circumstances of the case.

**This article was written by Principal, [Georgina Odell](#). For assistance in responding to a Show Cause Notice please contact Georgina.**

For further information, see the services available to [childcare and family day operators](#).



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