

APPENDIX 3

23rd May 2013

The Licensee

CHD

CEG

REDACTED

To the Licensee,

We have advised NSW Ombudsman Office of our strong intentions of lodging a formal complaint against ^{CEG} for incidents which occurred at the centre during 2010. The Ombudsman's Office advised that we are required to submit this formal complaint to the Licensee of the centre in the first instance. This letter outlines the details of our complaint to the Ombudsman. We have sent copies of this letter to both addresses listed on the ASIC website for the company listed as owning ^{CEG}

We firmly believe the NSW Ombudsman's Office has a duty to investigate ^{CEG} ^{REDACTED} to identify any breaches of duty of care, licensing and regulation, and to identify specific instances of negligence in the management of the centre, which led to the co-owner of the centre ^{CDM} committing multiple acts of aggravated indecent assault against our daughters - ^{CDQ} ^{CDO} ^{CEW} and ^{CEY} - during 2010. We firmly believe that the management of the centre and the perpetrator acted unreasonably and in a way which harmed children by:

- Allowing the perpetrator the opportunity to indecently assault at least 4 children in the centre on multiple occasions; and
- By improperly withdrawing a childcare service from ^{CDO}.

We believe these actions were undertaken without proper regard to, or full compliance with, the child care centre's obligations within the applicable legislative and regulatory frameworks.

The following are questions, observations and statements which we firmly believe the NSW Ombudsman has a duty to specifically investigate toward assessing the centre for breaches of legislative and regulatory obligations and for negligence:

1. Was the perpetrator employed/registered as a carer? If not, what are the regulations on access to children in childcare centres for people not employed/registered as a carer? We can attest to the fact that he had daily contact with the children.
2. If the perpetrator was not employed as a carer, should his presence at the centre have been counted, within the regulations, toward the staff:child ratios?
3. In an email from the centre Director to ^{CDN} dated 13.05.09, the Director states "^{CDM} interacts with the children in the yard and in the Little preschool where a minimum of three other staff are present." We can attest to the fact that this is not true. On multiple occasions the perpetrator was seen in the preschool particularly late in the afternoons, with only one or two other carers in this room.

4. Did the centre have a policy defining appropriate levels of physical contact between staff members and children? And, if the perpetrator was classified as non-care staff, did the centre's policies differentiate between care staff and non-care staff? ^{CEY} [redacted]'s primary complaint to police during the criminal investigation of the perpetrators' indecent interactions was that the perpetrator touched her vaginal area over the top of her underwear whenever she sat on his lap when they were in the outdoors yard area. It would have been physically possible for the perpetrator to commit these indecent acts even when other care staff had a clear line of vision to him. There would have been easy opportunity for him use angles and choose particular places in the large yard to enable him to achieve this touching without being noticed by other staff. Allowing the perpetrator to place children on his lap presented this opportunity to him.
5. On the 13/5/09 the perpetrator greeted ^{CDO} [redacted] to the centre by kissing her on the forehead. ^{CDO} [redacted]'s mother ^{CDN} [redacted] observed that ^{CDO} [redacted] reacted uncomfortably to this, pulling away from him and saying "yuck". ^{CDN} [redacted] raised her concerns about this incident in an email to the Director of ^{CEG} [redacted]. The Director's email response lacked any comment or reference to policy or regulation concerning proper touching of children by staff. The theme of the response was "^{CDM} [redacted] was very nervous about being a man in a child care centre. It took a lot of encouragement from me I told ^{CDM} [redacted] just to treat the children as he would his own grandchildren". She went on to say "Having known him all of my life I can honestly say he is a kind and decent man". We believe it was unreasonable and neglectful for the Director to not disclose, in the context of this complaint, that the person named in the complaint was her father. We also believe it was very unreasonable for the Director to reassure a mother's concern in this instance with her subjective, emotionally based assessment of her own father. What were the Director's responsibilities in responding to a complaint of this nature? Surely a child reacting uncomfortably to being kissed by a male staff member warranted a review of proper and acceptable touching of children by staff. Was any report made of this complaint by the Director? Also, the blurring of the distinctively different roles of childcare centre worker and grandfather in the mind of a childcare centre Director requires assessment on its own standing. We never expected, or gave our permission to the perpetrator to treat our daughters as his own granddaughter. We expected the centre to provide a professional level of care for our daughters, not a quasi-grandfather. The Director of the centre had no right to make the decision to tell her father to act as a grandfather to children in the centre on behalf of all parents without any communication to parents. The Director's statement here shows a clear misunderstanding of the nature of childcare work and of a childcare centre's role in the care of children.
6. On the basis of our daughters' disclosures over time, we have been able to pinpoint two physical space areas of the centre where the perpetrator was able to gain solo access to children without being in clear sight of vision of another staff member. This is in clear breach of the regulation stating that two staff members need to be present at all times when children are present:
- a. The first area is the sandpit which was tucked around a little corner at the back of the large yard of the centre. The positioning of this sandpit meant that it was not in direct line of vision from most areas in the yard. ^{CDO} [redacted] has stated that her assaults occurred "where ^{CDM} [redacted] relaxes near the sandpit". Referring to times when the perpetrator tickled her on her underpants, my daughter ^{CDQ} [redacted] stated that "no one ever saw us when we did that Mumma". When I asked how that could have been possible because there were always so many

carers around, she said "oh we have a really big yard, we would just go far away". So even when the proper staff ratios were being upheld in the backyard, unless at least one of the carers on duty stayed toward the very back of the yard at all times, the perpetrator had opportunity to be out of sight of the other carers when at the sandpit with a child/children. It is clear to us that the perpetrator utilised this area to gain solo access to children.

- b. The other area where this was occurring was the locker section of the upstairs room. ^{CEW} [redacted] has stated that on more than one occasion she was the only child in this area at sleep-time when the perpetrator was with her. There was a door from the kitchen, where the perpetrator spent much time, which led directly to this space. As with the sandpit, this area was tucked around a corner. A carer would have needed to stay in the very front area of this room to have any line of vision to it. We believe that the perpetrator identified this area and the sandpit as areas where he could create opportunity to be out of sight of other carers whilst the centre was supposedly maintaining regulation staff ratios. It is clear that him being with children in these two areas without any other staff member having a clear line of vision to the space is in clear breach of the regulation stating that two staff members need to be present with a child/children at all times.
7. The Director's response to the first and subsequent charges of aggravated indecent assault also requires investigation. Emails and newsletters sent by the Director from that day on have always given clear messages that she is behind her father 100%. This gives a clear statement that she believes the children who have disclosed have been making false statements about her father, either of their own accord or driven by their parents. Statements include:
- a. "we are fighting this all the way My dad is just an easy victim";
 - b. "I am not commenting on what the child has suffered in her little life. I am saying it did not happen at my centre";
 - c. "Another child has changed their story after being questioned with zero concerns several weeks ago".
 - d. Another statement which we believe constitutes threatening language is "I would be very interested in who would object to it (the perpetrator returning to the centre) once he is cleared".
 - e. The clear consistent messages the Director has given since the first arrest show she has no capacity to make an unbiased assessment of the situation. Her father's welfare has always been first and foremost in her mind. She has shown no professional or personal capacity to take an objective, child-focused approach to her assessment of the situation. What are a Director's legal and regulatory responsibilities in this situation? Were any of them met?
8. On the 21/11/10 ^{CDN} [redacted] was informed by Kogarah JIRT that her daughter ^{CDO} [redacted] placement at ^{CEG} [redacted] had been terminated by the Director without notice. What are the legislative and regulatory requirements on termination of childcare centre placements? This action requires investigation into the Director's duty of care and regulatory responsibilities in terminating placements. The Director's assertions that it was to protect her staff need to be properly investigated. Surely a Director cannot simply make those statements and terminate a placement without a full review of the situation which includes the parent's right to reply.

The perpetrator's harmful behaviour has caused our families extreme pain and trauma. We have broadly documented this impact and have submitted it to relevant

authorities. We are very committed to ensuring this process eventuates in reasonable outcomes.

We look forward to receiving your response to this complaint within three weeks of the date of this letter. Please send your response to REDACTED

Sincerely,

CDP

CDN

CEX

CEZ