

[REDACTED]

By email to: [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 may be aware, the Authority is the regulator of education and care services in the ACT and is responsible for monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. Authorised Officers are currently investigating an allegation that you inappropriately disciplined two preschool children on 6 June 2023 when employed as an educator at Wonderschool Throsby SE-40017295 (the Service) operated by Wonderschool (Throsby) Pty Limited PR-40019138 (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. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge). However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the alleged conduct may constitute inappropriate discipline, which is an offence under section 166(3) of the *Law*.
7. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour. Discipline that is inappropriate within the meaning of section 166 of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Examples include yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.
8. If, after considering all available evidence, the Authority finds an offence has occurred, it will need to consider whether compliance action is required. The Authority considers many factors

when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment.

9. However, the Authority's primary consideration must be to ensure the health, safety and wellbeing of children being educated and cared for, which is the first objective of the National Quality Framework in section 3(2)(a) of the Law. Possible compliance actions appear at the end of this Notice.

Background

10. On 8 June 2023, the Authority received a notification from the Provider advising of an allegation that you used inappropriate restrictive practice with a child. Refer copy of the notification at [Attachment A](#)
11. On 8 June 2023, the Provider advised that a proactive risk mitigation strategy implemented whilst they undertook their investigation was to suspend your employment from the Service pending the outcomes of the Provider's investigation. Refer relevant additional information at [Attachment B](#).
12. In addition, the Provider submitted copy of CCTV footage . Refer slide shots of footage at [Attachment C](#) (actual footage can be arranged to be viewed upon request).
13. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate the matter.

Allegations of non-compliance

14. It is alleged that about 2.20pm on Tuesday 6 June 2023, you were a staff member at Wonderschool Throsby, an education and care service, and subjected a child, [REDACTED] (3:3) to inappropriate discipline that is unreasonable in the circumstances by picking him up, holding him under her right arm and jumping 1.5m down from a fort; in contravention of section 166(3) of the *Law*.
15. It is alleged that about 2.20pm on Tuesday 6 June 2023, you were a staff member at Wonderschool Throsby, an education and care service, and subjected a child, [REDACTED] (3:0) to inappropriate discipline by putting her hand on his back to redirect the child in a manner unreasonable under the circumstances; in contravention of section 166(3) of the *Law*.

Legislation Relevant to Allegation

16. The following provision of the *Law* is relevant to the Allegation:

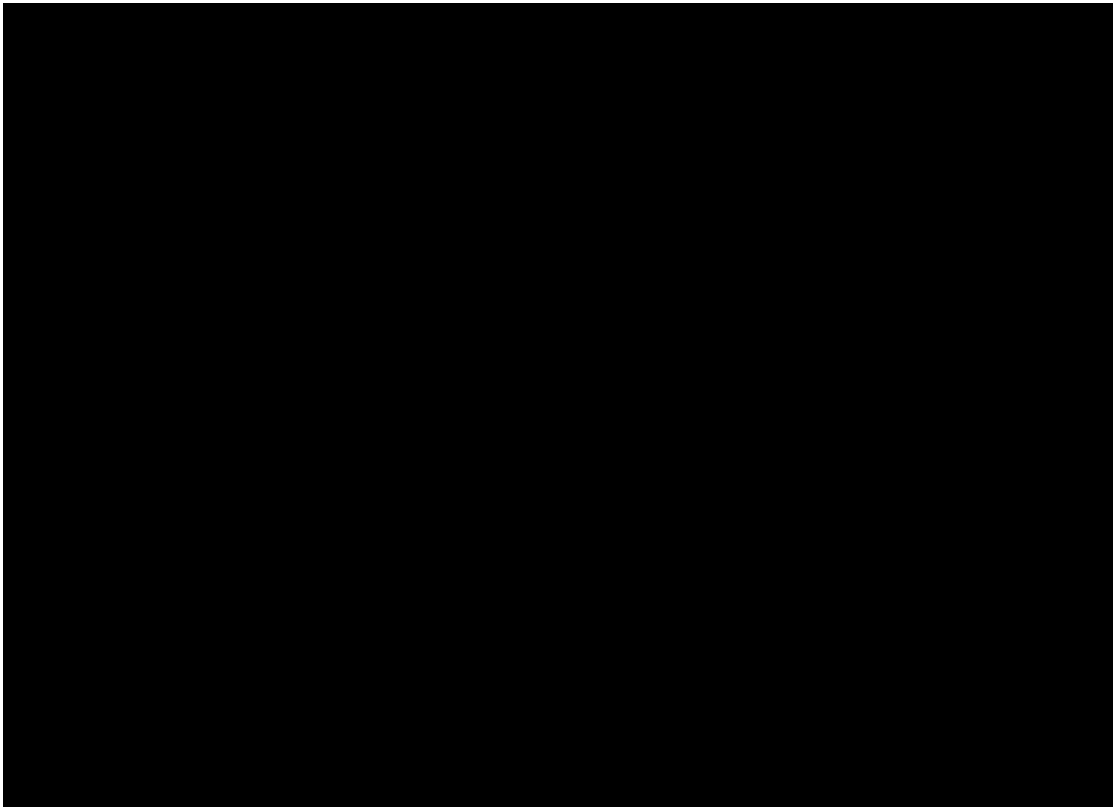
Section 166(3) of the Law – Offence to Use Inappropriate Discipline

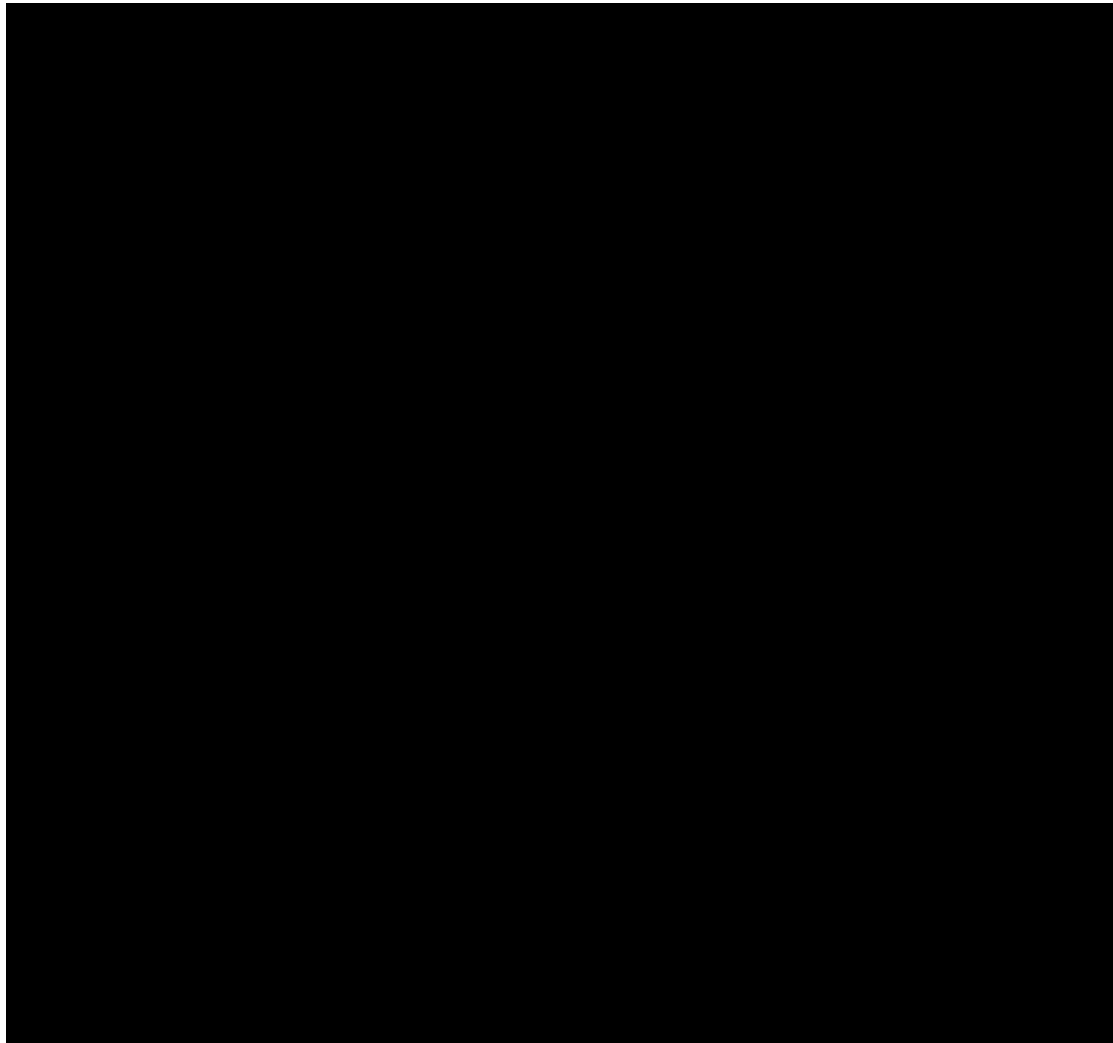
A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to-

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Evidence relevant to Allegation

17. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Records produced by the Provider supported the following:
- a. The Service was operating on 6 June 2023.
 - b. You were an educator at the Service and working directly with children in the preschool room on 6 June 2023. Attachment D.
 - c. [REDACTED] and [REDACTED] enrolled at the Service and signed into the Preschool room on 6 June 2023. Attachment E.
 - d. Provider internally investigated the complaint identified via NOT-40865427. Refer to Attachment F.
18. During the investigation, the Authority obtained an additional witness statement, relevant extracts from which appear below, with personal information redacted where appropriate. Please note that some witness statements are obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
19. Relevant extracts from Witness A's statement are:





20. Internal investigation documents furnished by the Provider pursuant to a 215 Notice correct date and eastern standard time. The following actions are time stamped included CCTV footage of the incident supplied by the Provider, upon request, appears to display:

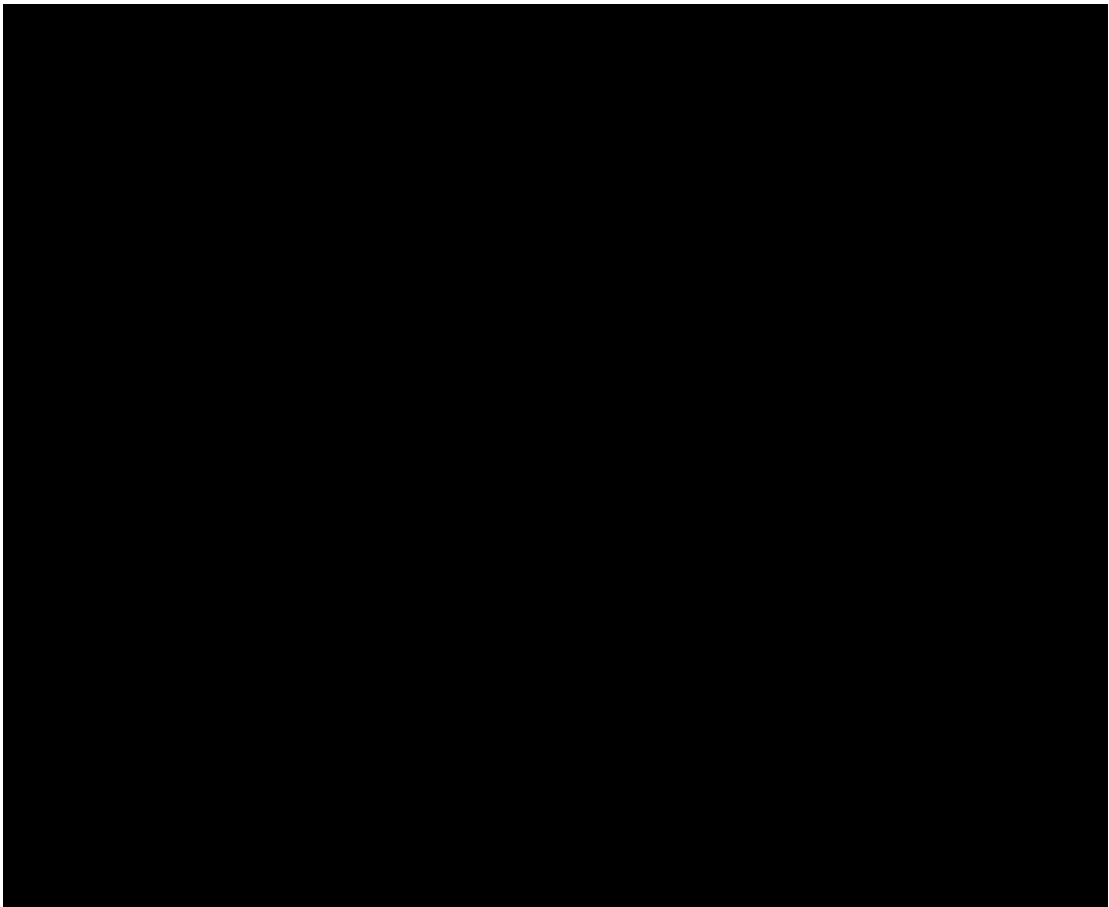
- 00:01 [REDACTED] can be seen wearing a black jumper, standing on the highest fort, hunched over. Educator [REDACTED] is standing beside the sandpit holding a broom.
- 00:03 [REDACTED] uses both arms to pick up child [REDACTED] and holds him against her right hip. The child is facing outwards. She takes two steps forward on the fort.
- 00:06 [REDACTED] jumps down (approximately 1.5m) from the fort onto the ground/tan-bark still holding the child on her left hip. Educator [REDACTED] can be seen walking nearby [REDACTED]
- 00:10 [REDACTED] is seen walking behind the equipment towards the right of the playground, still holding the child on her left hip. There is a moment where she interacts with a child in a blue hat but this is somewhat obscured by a pole.
- 00:13 [REDACTED] changes direction and walks around the back of the playground to the left, still holding the child on her left hip.

00:23 [REDACTED] appears to say something to educators [REDACTED] but does not stop walking. She continues walking towards a black sliding door at the back of Preschool Room 1.

00:24 [REDACTED] bends down to look through the glass door, slides the door open with her left arm and places the child on the ground inside the door.

Refer to Attachment C - CCTV Still Shots

21. Internal investigation documents furnished by the Provider pursuant to a 215 Notice included an electronically recorded Record of interview conducted between the Provider and yourself. The following statements are extracts taken from this interview and are relevant to the Allegations:



22. Internal investigation documents furnished by the Provider pursuant to a 215 Notice included meeting notes. The following are excerpts from these notes:

- a. *Allegation 2 (prior to watching the CCTV) [REDACTED] does admit to going onto the playground but only spoke with [REDACTED]. Didn't pick him up or carry him.*
- b. *[REDACTED] spoke with [REDACTED] however claims the allegation is false.*
- c. *After watching the CCTV, [REDACTED] said, [REDACTED] was kicking his friends in the head and mouth area. His friends were upset and she went over.*
- d. *Children were not injured to the point of needing to record incident.*

- e. [REDACTED] jumped off the equipment with [REDACTED] to go inside. She couldn't go down the slide, couldn't go down the pole. Didn't see any other safe option.
- f. Not sure why she changed direction.
- g. [REDACTED] didn't try to cause harm, but changed admission.
- h. Allegation 3 she doesn't recall the incident.
- i. Gone (sic) the opposite way because child was in the way.
- j. Doesn't recall applying any force.
- k. Do not recall pushing a child in that manner. Don't feel like she has done anything wrong. Helping child out of the way.

Refer to Attachment G.

23. Internal investigation documents furnished by the Provider pursuant to a 215 Notice included a Final Report regarding the allegations against you. The following findings were made in relation to all allegations:

Allegation One – Not sustained – Insufficient Evidence

Allegation Two – Sustained

Allegation Three – Sustained

Refer Attachment F

Contravention Supported by Evidence

24. Evidence gathered via the initial assessment of NOT-40865427 and subsequent regulatory investigation appears to support contraventions of section 166(3) of the *Law*.

Potential Compliance Actions

25. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation 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. The Authority issuing you with an official caution;
 - b. An Enforceable Undertaking pursuant to section 179A of the *Law*; and
 - c. A Prohibition Notice pursuant to section 182 of the *Law*.

Effect of an Enforceable Undertaking

26. An Enforceable Undertaking is a formal “promise” to the Authority to do or not do certain things. Terms vary, but examples of requirements are:
- a. only working with children under supervision;
 - b. doing some additional training to improve your skills as an educator;
 - c. keeping the Authority advised of your workplace; or
 - d. having an approved mentor.
27. It is a flexible way to ensure ongoing compliance with the *Law* and *Regulations* and may be appropriate depending on the level of risk to children.
28. If you offer an enforceable undertaking and the Authority accepts it, failure to comply with any of its terms after acceptance allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *Law* to enforce the undertaking.

Section 179A of the Law – Enforceable undertaking

- (1) This section applies-
- a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
 - b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1) (a) applies the Regulatory Authority may accept a written undertaking from the person under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.

Effect of a Prohibition Notice

29. If, after considering all available evidence and any submission you wish to make, the Authority decides to issue a prohibition notice, while the prohibition notice is in force you must not:
- (a) provide education and care to children for an education and care service; or
 - (b) be engaged as an educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or
 - (c) carry out any other activity relating to education and care services.

Section 182 of the Law – Grounds for giving prohibition notice

- (2) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed –
- (a) to remain on the education and care service premises; or
 - (b) to provide education and care to children.
- (3) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following –
- (a) an approved provider;
 - (b) a nominated supervisor;
 - (c) an educator;
 - (d) a family day care educator;
 - (e) an employee;
 - (f) a contractor;
 - (g) a volunteer;
 - (h) a person who was formerly a person referred to in paragraphs (a) to (g) in relation to the approved education and care service –
- or in any other capacity

Section 183 – Show cause notice to be given before prohibition notice

- (1) Before giving a prohibition notice, the Regulatory Authority must give the person a notice (a ***show cause notice***) –
- (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
 - (b) stating the reasons for the proposed prohibition; and
 - (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

Right of response

30. You have a right to respond to the allegations set out in this notice. You may respond in writing or by way of a recorded interview with two Authorised Officers.

Responding in Writing

31. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if compliance action should be taken. If you need additional time, please direct a request with reasons to the contact officer.

32. At [Attachment H](#) to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.

Responding in an Interview

33. If you wish to respond in a recorded interview with Authorised Officers, please advise the contact officer within seven days. A convenient time will be arranged for you to attend at the Authority's premises in Stirling, ACT, to provide your response in person. You are permitted to bring a support person to that interview, as long as the person does not have any connection with the Provider or the Service.
34. If you respond in writing, please direct your written submission via email to Authorised Officer, Nicole Withers at Nicole.Withers@act.gov.au or by post to:

Nicole Withers – Authorised Officer
Children's Education and Care Assurance (CECA)
Education Directorate
GPO Box 158, CANBERRA ACT 2601

Caution

35. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
36. Please be aware that all evidence gathered via the investigation and disclosed in this Notice to ensure you receive procedural fairness, is protected information under the *National Law*.

Legislation

37. The *Law* applies to you as an educator and to any service you may be employed at.
38. 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>.
39. The *Law* and *Regulations* can be viewed at: <http://www.cecqa.gov.au/national-law,and>
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
40. Should you have any questions about this Show Cause Notice please contact Nicole Withers by email at nicole.withers@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

28 September 2023