

By email to: [REDACTED]

Dear Mr [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.
- 2) 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*.
- 3) The Authority is currently investigating allegations that you inappropriately disciplined a child on 12 September 2023. The conduct allegedly occurred when you were employed as an educator at Marlee Early Education and Care Centre SE-40002122 (the Service) operated by Community Services #1 PR-00005865 (the Provider).
- 4) Web addresses to the *Law*, and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
- 5) 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 allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
- 6) Detailed instructions of how to respond appear at the end of this Notice.
- 7) If substantiated, the alleged conduct may constitute inappropriate discipline, which is an offence under section 166(3) of the *Law*.
- 8) “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.

- 9) 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. Details relating to possible compliance actions appear at the end of this Notice.

#### **Grounds for issuing Show Cause Notice**

- 10) The evidence obtained during the investigation to date supports offences under the *Law* within the following area: Educator – child interactions amounting to discipline unreasonable in the circumstances.

#### **Facts**

- 11) On 13 September 2023, the Authority received, from the Provider, a notification of an incident occurring on 12 September 2023. The notification alleged that you took a child's head, known to be [REDACTED] (3:3) and used your hands to push the child's head into a bookcase, simultaneously saying to the child "see what happens if you do not listen". Refer to Notification of Incident – NOT-40901693 at [Attachment A](#).
- 12) On 19 October 2023, the Provider furnished documents pursuant to a notice issued by the Authority under section 215 of the Law (215 Notice). Relevant documents include (Please note that records have been redacted to protect the person details of witnesses):
- a) Child Attendance Records – Refer [Attachment B](#)
  - b) Working Directly with Children Records – Refer [Attachment C](#)
  - c) Signed Record of Interview – Witness A and Witness C – [Refer Attachment D](#)
  - d) Summary of Investigation Interview - [REDACTED] – [Refer Attachment E](#)
  - e) Advice of Allegation and Investigation – [REDACTED] - [Refer Attachment F](#)
  - f) Internal Email – [Refer Attachment G](#)
  - g) Notice of Outcome of Investigation – [Attachment H](#)
- 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:
- a) On Tuesday 12 September 2023 about 9.50am, you took a child's head, known to be [REDACTED] (3:3) and used your hands to push the child's head into a book case, simultaneously saying to the child "see what happens if you do not listen", in contravention of section 166(3) of the *Law*.

**Law**

15) The following provision of the *Law* is relevant to the allegations:

**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 the Allegation**

16) 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 12 September 2023.
- b) You were an educator at the Service and working directly with children on 12 September 2023.

Refer Attachment C – Working Directly with Children Records

17) During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Please note that some witness statements were obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.

18) Relevant extracts from Witness A's statement are:

- a) [REDACTED]

19) Relevant extracts from Witness B's statement are:

- a) [REDACTED].

b) [REDACTED]

20) Contemporaneous email notes made on 12 September 2023, support the statement of Witness B. Refer to Attachment G.

21) Provider internal investigation witness statements provide that:

- a) There was one direct witness to the incident
- b) That you have aggressive behaviour and seem to become stressed;
- c) That you shout at children;
- d) That you pat them hard on the face;
- e) That you are very gentle with the children but do not have a professional relationship with workers;
- f) There has never been a report about your behaviour towards children, but concerns have been raised about the way you communicate with them.

Refer Internal Witness Statements – Attachment D

22) In an interview with the Internal Provider on 25 September 2023, you stated that you disagreed with allegations made against you - Refer to Attachment E.

Contravention Supported by Evidence

23) Evidence gathered via the initial assessment of the notifications of incidents and subsequent regulatory investigation appears to support contraventions of section 166(3) of the *Law*.

**Potential Compliance Actions**

24) 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, and/or the Authority considers that there may be an unacceptable risk of harm to a child or

children if you were allowed to be engaged in the childhood education and care sector.

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

25) 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.

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.

26) 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.

(3) 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

27) 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**

- (1) 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.
- (2) 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**

- 28) 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.
- 29) 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.
- 30) At Attachment I to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.
- 31) 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.

- 32) If you respond in writing, please direct your written submission via email to Authorised Officer, Nicole Withers at [Nicole.withers@act.gov.au](mailto: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

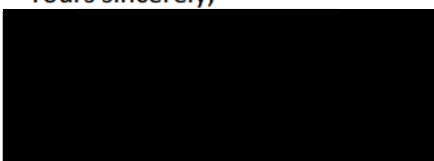
**Caution**

- 33) 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.
- 34) 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**

- 35) The *Law* applies to you as an educator and to any service you may be employed at. 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>.
- 36) 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>
- 37) Should you have any questions about this Show Cause Notice please contact Nicole Withers by email at [nicole.withers@act.gov.au](mailto:nicole.withers@act.gov.au).

Yours sincerely,



Janine Fairburn  
Assistant Director  
Children’s Education and Care Assurance  
Education and Care Regulation and Support

24 January 2023