

RE: (Fmr) Snow Gum Early Childhood Learning Centre

Email:

Dear

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA).
2. As you may be 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* (the Law). One of the Authority’s roles is to investigate suspected offences under the Law.
3. The Authority is currently investigating multiple suspected offences at service formerly known as Snow Gum Early Childhood Learning Centre SE-40013163 (the Service) previously operated by Consulting Pty Ltd PR-00005827 (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) and the Authority has determined that there is sufficient evidence to support a case for you to answer regarding a suspected offences under the Law.
6. 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. Detailed instructions of how to respond also 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 hitting, 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. Further details regarding potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

10. Evidence obtained during the investigation to date supports offences under the *Law* within the following area: Inappropriate discipline of a child.

Facts

11. On 11 March 2024, the Authority received a notification of complaint (NOT-40964800) from the Provider, advising of a parent complaint alleging an educator manhandling a child ([REDACTED] [REDACTED] Refer Attachment A.
12. On 14 March 2024, the Provider furnished the following upon request of the Authority:
- a) Parent complaint.
 - b) Witness statements.
 - c) Accused statement.
 - d) Policies and procedures.

Refer to Attachment B.

13. Due to the risk of harms and hazards likely to cause injury if children are inappropriately disciplined, the Authority determined to investigate the matter, which engaged suspected offences under sections 166(3) of the *Law*.

Allegation of Inappropriate Discipline

14. It is alleged that on 6 March 2024, [REDACTED] [REDACTED] a staff member at the Service, subjected a child, believed to be [REDACTED] [REDACTED] (3:11), to inappropriate conduct amounting to discipline, unreasonable in the circumstances, in that he, [REDACTED] [REDACTED] physically restraining a heightened [REDACTED] [REDACTED] by wrapping his arms about him, contravening section 166(3) of the *Law*.

Legislation Relevant to Allegation

15. The following provisions of the *Law* are relevant to the Allegation:

Section 166(3) of the Law - Offence to use inappropriate discipline

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

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

Penalty: \$11 400, in the case of an individual

Evidence relevant to the Allegation

16. On 23 April 2024, Provider furnished documents pursuant to a Section 215 Notice. Relevant documents include:

- a) Responsible Person.
- b) Child attendance records.
- c) Working directly with children records (WDWC).
- d) Enrolment record.
- e) Policy/Procedures.
- f) Induction records ([REDACTED] [REDACTED])

Refer to Attachment C.

17. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, the witnesses are identifiable from the content of their evidence.

18. Please note that educator witness statements were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.

19. Direct evidence of [REDACTED] [REDACTED] being restrained by accused educator, [REDACTED] [REDACTED] is given by Witness A. Relevant excerpts include:





20. Witness B gives direct evidence of children being restrained by, [REDACTED] as a strategy to deescalate children, corroborating evidence of Witness A. Relevant excerpts from Witness B's statement include:



22. WDWC records and evidence identify [REDACTED] [REDACTED] and [REDACTED] [REDACTED] as educators in the Dingoes room on 6 March 2024. Refer Attachment C for WDWC records.
23. The Provider conducted an internal investigation and furnished a handwritten statement from accused educator, [REDACTED] [REDACTED]. The statement outlines the following admissions that support aspects of witness A's statement:
- a) He, [REDACTED] [REDACTED] was alone in the room with the children when [REDACTED] entered.
 - b) Child, [REDACTED] [REDACTED] was heightened at the time of [REDACTED] entering the room.
- Refer Attachment B for handwritten statement.
24. The statement by [REDACTED] [REDACTED] omits any physical interaction with child, [REDACTED] contradicting the direct witness. Refer to Attachment B for educator handwritten statement.
25. Interview notes furnished by Provider indicate he, [REDACTED] [REDACTED] stated, "did not touch him", believed to mean the accused did not restrain [REDACTED] [REDACTED]. Refer to Attachment B for discussion notes.
26. Induction records indicate accused educator, [REDACTED] [REDACTED] commenced at the Service 15 November 2022 and completed all standard policies and procedures. There appears no further training review of policies and procedures until after 6 March 2024. Refer Attachment C for induction.

Contraventions Support Allegation

27. Evidence gathered appears to support that [REDACTED] [REDACTED] was subjected to conduct amounting to discipline that is unreasonable in the circumstances, in that, he was held in a bear hug while escalated, contravening section 166(3) of the *Law*.

Potential Compliance Actions

28. 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 finds that you may be an unacceptable risk of harm to a child or children. Potential compliance actions are under Part 7 of the *Law*, and include:

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.
- (4) 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.

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.

Effect of an Enforceable Undertaking

29. 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; or
 - b. doing some additional training to improve your skills as an educator; or
 - c. keeping the Authority advised of your workplace; or
 - d. having an approved mentor.
30. 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.
31. 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.

Effect of a Prohibition Notice

32. 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.

Right of response

33. Please note that the Authority has made no decision at the time of sending the Notice and will make no decision without giving you a reasonable opportunity to respond.
34. If you do not respond to the Notice at all, or within the allowed timeframe, the Authority can only consider the evidence it already has when deciding if any offences have been substantiated on the balance of probabilities and, if so, what (if any) compliance action should be taken.
35. 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.
36. 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.
37. At Attachment D to this Notice is a ‘4 Step Guide to Responding to a Show Cause Notice’ to assist in the development of your submission.
38. 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.

39. If you respond in writing, please direct your written submission via email to Authorised Officer Brian Cropper at brian.cropper@act.gov.au or by post to:

Children's Education and Care Assurance (CECA)
Education Directorate
Attention: Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

40. 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.
41. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
42. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.

Legislation

43. 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>.
44. 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>
45. Should you have any questions about this Show Cause Notice please contact Authorised Officer Brian Cropper at brian.cropper@act.gov.au.

Yours sincerely,



Nicole Withers
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
31 July 2023