



### Grounds for issuing Show Cause Notice

8. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas: Inappropriate discipline and protection from harms and hazards.

### Facts

9. 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.

10. 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.

11. Due to the risk of harms and hazards likely to cause injury if children are subject to inappropriately interactions amounting to discipline, the Authority determined to investigate, engaging suspected offences under sections 166 and 167 of the *Law*.

### Allegation

12. It is alleged that on 6 March 2024, the Provider failed to ensure that no child being educated and cared for by the Service was subjected inappropriate conduct amounting to discipline, unreasonable in the circumstances, in that a child believed to be [REDACTED] [REDACTED] (3:11), was physically restrained while heightened, contravening section 166(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

### Legislation Relevant to the Allegation

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

#### **Section 166(1) of the Law - Offence to use inappropriate discipline**

The Approved Provider of an education and care service must ensure that no child being educated and cared for by a service is subjected 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

\$57 400, in any other case.

#### **Section 167(1) of the Law - Offence relating to protection of children from harm and hazards**

The Approved Provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

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

\$57 400, in any other case.

**Regulation 155** provides that an approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that—

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Evidence relevant to the Allegation

14. 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.

15. 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.

16. 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.

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

18. 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:

[REDACTED]



by the educator wrapping arms around him contravening section 166(1) of the *Law* and giving rise to a contravention of 167(1) of said *Law*.

26. Ensuring that no child is subjected to corporal punishment, or discipline unreasonable in the circumstances, is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury.

### **Potential Compliance Action**

27. 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 an offence is substantiated. Potential compliance actions include:
- a. Non-statutory Administration Action (similar to a caution) with no further action;
  - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
  - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
  - d. Imposing of Conditions on the Service’s approval under section 51 of the *Law*.
  - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
  - f. Cancellation of the service approval under section 79 of the *Law*.
28. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
29. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

### **Right of response**

30. As mentioned previously, this is the Provider’s opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority’s consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
31. 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. Please direct your written submission via email to [Brian.Cropper@act.gov.au](mailto: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**

32. 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*.
33. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
34. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
35. The *Law* applies to you as a provider and any service you operate. 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 Brian Cropper on [Brian.Cropper@act.gov.au](mailto: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 2024