




Dear 

**Show Cause Notice – Proposed Compliance Action**

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, have recently conducted inquiries into an allegation that you inappropriately disciplined a child, known to be  (five years old), on 17 August 2020, at SDN Bluebell Early Childhood Education Centre SE-00009834 (the Service), operated by SDN Children’s Services PR-00005562 (the Provider).
2. 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.
3. I am considering compliance action based on a suspected contravention of the *Law* indicated by information produced by the Provider. Potential compliance actions include, but are not limited to, an enforceable undertaking pursuant to section 179A of the *Law*.
4. The grounds for issuing this show cause notice arise from a complaint notified by the Provider to the Authority on 18 August 2020 regarding your conduct on 17 August 2020, whilst employed as an educator at the Service.
5. I consider that your alleged conduct may constitute inappropriate discipline, which is an offence under the *Law*. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour.
6. Discipline that is inappropriate within the meaning of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child, such as unreasonable restraint, physically dragging a child, or yelling, isolating, or humiliating children.

**Facts**

7. On 18 August 2020, a notification of complaint was received by the Authority regarding your conduct towards a child, known to be , on 17 August 2020, in particular the method used to remove  from a sandpit.
8. The Authority made further enquiries and obtained numerous documents from the Provider, including all documentation relating to the Provider’s workplace investigation into the allegations raised against you.

9. Evidence gathered supports an allegation of inappropriate discipline, which engages an offence provision under the *Law*.

**Allegation of Inappropriate Discipline**

10. It is alleged that, on 17 August 2020, whilst at the sandpit in the outdoor area of the Service, you subjected a child being educated and cared for by the Service [REDACTED] to inappropriate discipline by grabbing the child around the arm and pull her from the sandpit and yell at her with words to the effect of 'get out and go', in contravention of section 166(3) of the *Law*.

**Evidence relevant to Allegation**

11. Documents obtained from the Provider included the following:
- a. Transcribed notes of interview between yourself, [REDACTED] and [REDACTED] on 20 August 2020 (Refer Attachment A);
  - b. Transcribed notes of interview with witnesses of the alleged conduct;
  - c. Original complaint alleging conduct (Refer redacted copy at Attachment B); and
  - d. Provider's reportable Conduct findings and outcomes – being that, although the Provider did not determine the matter as Reportable Conduct, you were issued a first and final warning, along with a requirement to make appropriate modifications to your interactions with children.
12. It is noted that, in the material produced by the Provider, you have conceded to elements of the allegation as framed. However, before considering compliance action, the Authority is providing you with an opportunity to respond to the allegation with any further relevant information or documentation.

**Contravention Supported by Allegation**

13. The evidence produced by the Provider to the Authority supports a contravention of the following section of the *Law*:

**Section 166 – Offence to Use Inappropriate Discipline**

- (3) 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.

**Inappropriate Interactions**

14. In addition to the allegation of inappropriate discipline outlined above, the documentation produced by the Provider refers to specific dates, being 31 October 2019 and 10 February 2020, whereby you have been spoken to by [REDACTED] regarding positive interactions, using a calm tone of voice and positively directing children.

15. Actions such as not using a calm tone of voice and directing children in a negative way, although not an offence of inappropriate discipline, are inappropriate interactions within the meaning of Regulation 155, in that they do not maintain the dignity and rights of each child. Accordingly, they may be relevant in formulating any appropriate compliance action.
16. The Authority would like to provide you with an opportunity to provide any further information or documentation in response to the assertions of inappropriate interactions by the Provider.

### **Potential Compliance Actions**

17. Should the allegation of inappropriate discipline be substantiated, the statutory compliance actions available to the Authority to consider include an enforceable undertaking, as set out below:

#### **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.
18. Should a decision be made to offer you an enforceable undertaking under section 179A of the *Law*, and you accept the undertaking, 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.
  19. It is also open to the Authority to issue non-statutory compliance action such as a caution letter, if appropriate.

### **Right of response**

20. You have a right to respond to the allegations set out in this notice. You may respond in writing or you may prefer to attend a recorded interview with two Authorised Officers.
21. **If you wish to attend a recorded interview** at the office of the Regulatory Authority in Stirling, please advise the contact officer via email or telephone (details below) within seven days of receiving this letter. You are entitled to bring a support person to any recorded interview, provided they have no connection with the Provider. The Authority will implement appropriate physical distancing and hygiene requirements as recommended by ACT Health.

22. **If you wish to respond in writing**, you may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
23. At Attachment C to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.
24. Please direct your written submission via email to Authorised Officer Janine Fairburn at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au) or by post to:

Janine Fairburn  
Authorised Officer  
Children's Education and Care Assurance  
GPO Box 158  
CANBERRA ACT 2601

**Caution**

25. 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.

**Legislation**

26. The *Law* applies to you as an educator and to any service you may be employed at.
27. 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>.
28. 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>
29. Should you have any questions about this Show Cause Notice please contact Janine Fairburn by telephone on (02) 6205 4390 or email to [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely,

Clare Brookes  
Senior Director  
Children's Education and Care Assurance  
Early Childhood Regulation  
Education Directorate

September 2020