

[REDACTED]

[REDACTED]

Dear Mr [REDACTED]

**Decision to Propose an Enforceable Undertaking**

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently conducted inquiries regarding an allegation that you inappropriately disciplined a child on 13 January 2023 when employed as an educator at Lavender Lane Child Care Service SE-00009802 (the Service) operated by G8 Education Limited PR-00000898 (the Provider).
2. Web addresses to the *Education and Care Services National Law 2010 (ACT)* (the *National Law*) and the *Education and Care Services National Regulations* (the *National Regulations*) are provided for your convenience at the end of this decision.

**Facts**

3. On 18 April 2023, you were issued with a Show Cause Notice (the Notice) by the Authority. The Notice advised you that the Authority had been notified from the Provider on 13 January 2023 of an allegation. It was alleged that you used inappropriate discipline on a 4-year-old child. CCTV footage was advised as obtained by the Service which confirmed the allegation as detailed.
4. The Notice advised of the allegation being raised as follows:

**Allegation of Inappropriate Discipline**

5. It is alleged that, on 13 January 2023 while signed into the toddlers’ room, and in an outdoor environment at the Service, you were witnessed using inappropriate discipline against a child, known to be [REDACTED] (aged 4 years)., The inappropriate disciplines was in a manner unreasonable in the circumstance, by physically lifting the child up by one arm and moving them several steps, in contravention of section 166(3) of the *Law*.
6. The Notice advised that potential compliance actions included an enforceable undertaking or prohibition notice. The Notice referred to and included copies of the evidence relied upon and provided you with an opportunity to respond before any compliance action was taken.  
  
Refer Attachment A for a copy of the Notice (without attachments due to size).
7. On 2 May 2023, you responded to the show cause notice, not disputing the allegation and advising you would be willing to undertake an enforceable undertaking.

## **Law**

8. Relevant Legislative Provisions engaged by this decision are as follows:

### **Section 166(3) – 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.

### **Section 184 - Deciding whether to give prohibition notice**

- (1) If the Regulatory Authority gives a show cause notice under section 183 to a person, the Regulatory Authority must have regard to any written submission received from the person within the time stated in the show cause notice before deciding whether to give the person a prohibition notice.
- (2) If the Regulatory Authority decides not to issue a prohibition notice to the person, the Regulatory Authority must give the person notice of the decision.
- (3) The Regulatory Authority may accept an undertaking from a person under section 179A instead of giving a prohibition notice under this Division.

### **Section 179A - Enforceable undertakings**

- (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 the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (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.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

### **Reasons**

9. Upon careful consideration of all available evidence, including your response to the Notice, the Authority is satisfied, on balance of probabilities, that you subjected [REDACTED] to discipline that was unreasonable in the circumstances on 13 January 2023, in contravention of section 166(3) of the *Law*.
10. Furthermore, the Authority determined that you may pose an unacceptable risk of harm to children and issued you the Notice, as required by the *National Law* when the Authority is considering issuing a prohibition notice.
11. The Authority has considered your Response, which raised, but was not limited to, the following points:
  - a. You did not dispute the evidence presented in the notice.
  - b. You had not completed your induction training prior to working directly with children.
  - c. You have been transferred to another service, being Gungahlin Kinder Haven, which has a higher proportion of full time/permanent educators to provide mentoring and guidance.
12. Considering the entirety of the evidence and submissions, the Authority has determined that the most appropriate course of action is to offer an enforceable undertaking under sections 179A and 184(3) of the *Law*. The proposed enforceable undertaking is attached and marked Attachment B.
13. The proposed enforceable undertaking is carefully formulated to address what the Authority views as a substantial risk to children, whilst providing you with an opportunity to undergo appropriate training to improve your level of understanding and ability in guiding young children's behaviour. Please be aware that the only alternative available to the Authority is prohibition.
14. If the Enforceable Undertaking is accepted, failure to comply with any of its terms allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *National Law* to enforce the undertaking. It is also open to the Authority to withdraw its consent to the Enforceable Undertaking and to issue a prohibition notice.
15. To accept the undertaking please sign for the "Person" on Attachment B and return to Authorised Officer Janine Fairburn within 14 days of receiving this decision. The undertaking may be returned via email at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au) or by post to:

Children's Education and Care Assurance  
Attn: Janine Fairburn  
GPO Box 158  
CANBERRA ACT 2601
16. If you elect to return the signed undertaking by post, please advise by email.
17. A countersigned copy will be returned for your records.
18. **Please note that the offer to accept an enforceable undertaking in lieu of prohibition is made under section 184(3) of the *Law*. If you wish to enter the enforceable undertaking, it is essential**

**that you sign and return the undertaking within the required time frame. If the signed undertaking is not received within the required 14 days, the Authority may review its decision.**

**Legislation**

19. The *National Law* applies to you as an educator employed within the early education and care sector. The *National 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>.
20. The *National Law* and *National Regulations* can be viewed at:  
<http://www.acecqa.gov.au/national-law, and>  
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
21. For your convenience, please also find ACECQA resource specifically related to inappropriate discipline at Attachment C.
22. If you have any questions in relation to this letter, please contact Authorised Officer Janine Fairburn by email at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours Sincerely



Jo Williams  
Director Regulatory Operations  
Childrens Education and Care Assurance  
Education and Care, Regulation and Support

15 May 2023