

Ms [REDACTED]
Person with Management or Control
G8 Education Limited
RE: Lavender Lane Child Care Service

Email: [REDACTED]

Dear Ms [REDACTED],

Decision to propose Enforceable Undertaking

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. As you are aware, Authorised Officers from the Authority recently investigated an allegation regarding Lavender Lane Child Care Service SE-00009802 (the Service) operated by G8 Education Limited PR-00000898 (the Provider).
2. It was alleged that an educator, known to be [REDACTED], inappropriately disciplined a child being educated and cared for on 13 January 2023 at the Service.
3. I am satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 18 April 2023, the Authority sent the Provider a Show Cause Notice (the Notice), advising of alleged contraventions of *Law*. Refer copy of Notice at Attachment A.
5. The Notice outlined the evidence obtained during the investigation, as well as advising that the Authority was considering compliance action based on evidence that there had been a contravention of the *Law* identified during the Authority's assessment of the matter.
6. The allegation raised for response within the Notice was as follows:

Allegation One – Section 166 of the Law

It is alleged that, on 13 January 2023, the Provider failed to ensure that no child being educated and cared for by the service is subjected to any discipline that was unreasonable in the circumstances in that a child, known as [REDACTED], was disciplined by way of lifting off the ground from one arm and moved several steps by Mr [REDACTED] in contravention of section 166(1) of the *Law*.

Allegation Two – Section 167 of the Law

It is alleged that, by failing to ensure that no child being educated and cared for by the service is subjected to any discipline that was unreasonable in the circumstances on 13 January 2023, the Provider has failed to take reasonable steps to protect children from harms and hazards likely to cause injury or illness, in contravention of s167(1) of the Law.

7. On 2 May 2023, a response to the Notice was received from the Provider via email. The submission consisted of the show cause notice and a response letter (the Response). Refer response at Attachment B.

Law

8. Provisions of the *Law* relevant to the notification assessment and Notice:

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 the service is subjected to—

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

Penalty: \$10 000, in the case of an individual.
\$50 000, 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: \$10 000, in the case of an individual
\$50 000, in any other case.

Reasons

9. After carefully considering all information obtained, the Authority is satisfied that the Provider was in contravention of section 166(1) and 167(1) of the *Law* in this instance.
10. I am satisfied, on balance of probabilities that the Provider, on 13 January 2022, did not ensure that children being educated and cared for by the service were not subject to discipline unreasonable in the circumstances. Furthermore, the Provider did not take reasonable steps to prevent harm of injury in that a child, known as ██████████, was disciplined by way of lifting off the ground from one arm and moved several steps by Mr ██████████ in contravention of section 166(1) and 167(1) of the *Law*.
11. The very nature of the admissions made by the Provider in the response, acknowledging that reasonable steps were not undertaken to prevent harm of injury or illness in relation to the activity undertaken further supports this determination.

12. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of a similar incident, I have considered that an appropriate compliance action in the circumstances would be to offer you the opportunity of consenting to enter into an enforceable undertaking.
13. I have also taken into consideration that the *Law* has a protective role and the Authority should consider amongst other things the best interests of children and best practice.
14. Section 179A of the *Law* provides that:

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 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 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.
15. Section 179B, 180 and 181 of the *Law* outline the legislative provisions relevant to: certain actions prohibited while undertaking is in force; certain actions prohibited if undertaking is complied with; and failure to comply with enforceable undertaking.
 16. The proposed undertaking would require you to take any steps necessary to ensure that the tasks you have listed, in regard to risk assessment and risk mitigation, in the Response to the Notice are carried out consistently and continuously across all services operated by the Provider.
 17. The proposed undertaking is at [Attachment C](#).
 18. To accept the undertaking please sign for the Approved Provider at Attachment C and return to Janine Fairburn within 14 days of receiving this decision via email at janine.fairburn@act.gov.au or by post to:

Children's Education and Care Assurance,
Attention Janine Fairburn,
GPO Box 158, Canberra ACT 2601.

19. A counter signed copy will be returned for your records.

Legislation

20. 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>.
21. 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>
22. If you have any questions in relation to this Decision, please contact me by email at Janine.Fairburn@act.gov.au.

Yours sincerely



Jo Williams
Director Regulator Operations
Children's Education and Care Assurance
Education and Care, Regulation and Support

15 May 2023