



Mr [REDACTED]
Person with Management or Control
Abacus 49 Pty Ltd
RE: Genius Gungahlin
Email: [REDACTED]

Dear Mr [REDACTED]

Decision to Cancel Service Approval

- 1) I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance.
- 2) 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 (ACT)* (the *Law*), together with receiving and investigating complaints arising under the *Law*.
- 3) As you may be aware, the Authority recently investigated suspected offences relating to the operation of Genius Gungahlin SE-40001554 (the *Service*), operated by Abacus 49 Pty Ltd PR-40015589 (the *Provider*).
- 4) The Authority is satisfied that the *Provider* has not complied with the provisions of the *Law* in this instance. Web addresses to the *Law* and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

- 5) On 6 March 2025, the Authority sent the *Provider* a Show Cause Notice (the *Notice*), advising that the Authority had determined there was sufficient evidence to support a case to answer regarding suspected offences under the *Law*.
- 6) The *Notice* outlined the grounds for issue, relevant evidence supporting the suspected contraventions of the *Law*, and potential compliance actions, including cancellation of the service approval, being considered if the allegations were substantiated. Refer copy of *Notice* (minus attachments due to size, however, can be provided again upon request) at [Attachment A](#).
- 7) The *Notice* set out the following allegations for the *Provider's* response:

Allegation One

It is alleged that between 17 September 2024 and 5 March 2025, the *Provider* failed to operate the *Service* in a way that ensures the safety, health and wellbeing of the children being educated and cared for by the service, in contravention of section 51(1)(a) and (8) of the *Law*, and engaging a contravention of section 167(1) of the *Law*.

Allegation Two

It is alleged that between 17 September 2024 and 5 March 2025, the Provider failed to operate the Service in a way that ensures that it meets the educational and developmental needs of the children being educated and cared for by the service, in contravention of section 51(1)(b) and (8) of the *Law*, and engaging section 167(1) of the *Law*.

Allegation Three

It is alleged that between 17 September 2024 and 5 March 2025, the Provider, by not ensuring compliance with the Law and national regulations, the Provider is not meeting the conditions of the service approval which is placing children at increased risk of harms and hazards likely to cause injury or illness, in contravention of sections 51(5) and (8), and engaging a contravention of section 167(1) of the *Law*.

- 8) On 20 March 2025, WLP Restructuring advised the Authority of Notice of Appointment of External Administrators for the Provider, with date of appointment occurring 19 March 2025. Refer correspondence at [Attachment B](#).
- 9) On 20 March 2025, phone correspondence was had with [REDACTED] Administrator representative, and Jo Williams, Director of Regulatory Operations for the Authority. During this correspondence, the Authority raised with the Administrator, acting as the Provider moving forward, that the Provider had been issued a Show Cause Notice relational to the Service, requiring response by 7 April 2025.
- 10) On 21 March 2025, a copy of the Show Cause Notice was sent to the Administrator via email, along with copies of the Decision to suspend service approval already in force. Refer copies of correspondence at [Attachment C](#).
- 11) On 8 April 2025, the Authority emailed the Administrator in relation to the Show Cause Notice issued 6 March 2025. The Administrator advised, same day, that they were not able to respond to the allegations, as the allegations occurred prior to their appointment.
- 12) Furthermore, the Administrator advised that on 24 March 2025, they issued a notice to the landlord of the Service premises stating that they were not exercising continued rights for use or possession of the premises. Refer email correspondence at [Attachment D](#).

Law

- 13) Refer [Attachment E](#) for provision of the *Law* relevant to the Allegations and Decision.

Obligations upon Regulatory Authority

- 14) The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely: "*to ensure the safety, health and wellbeing of children attending education and care services*".

15) The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:

(a) that the rights and best interests of the child are paramount; ...

(f) that best practice is expected in the provision of education and care services.

16) Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:

(c) to monitor and enforce compliance with this law;

(d) to receive and investigate complaints arising under this law.

17) The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.

18) A key objective of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

19) The *Law* is predominantly a protective *Law* and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Reasons and Decision

20) The Authority has considered all evidence gathered via regulatory processes, inclusive of the Administrator's response to the Notice, the Provider's compliance history, the compliance history of the Service, and the objectives and guiding principles of the *Law*.

21) The Authority is satisfied on the balance of probabilities, allegations are proven, therefore substantiating contraventions of sections 51(1), (5) and (8), and 167(1) of the *Law*.

22) The Authority is satisfied that evidence obtained via regulatory processes supports the offences being substantiated, on balance of probabilities. The Authority notes that the Provider submitted no response to the Notice to mitigate or disprove the credibility of the evidence put to the Provider by way of the Notice.

23) Furthermore, the Authority is not satisfied that the reasons for the current suspension in force have been rectified, nor is there evidence provided by the Administrator to support that any rectification measures are being undertaken in relation to the Service to encourage any possible future operation occurring.

- 24) Regarding the substantiated contraventions of the *Law*, the Authority is satisfied, on the balance of probabilities, that between 17 September 2024 and 5 March 2025 the Provider did not ensure that the Service was operated in a way that –
- (a) Ensured the safety, health and wellbeing of the children being educated and cared for by the service; and
 - (b) Met the educational and developmental needs of the children being educated and cared for by the service.
- 25) The Authority is satisfied that, on the balance of probabilities, that between 17 September 2024 and 5 March 2025 the Provider has not met the conditions of the service approval prescribed in the *Regulations* or imposed by the *Law* which is placed children at increased risk of harms and hazards likely to cause injury or illness.
- 26) The compliance history of the Service supports the substantiation of section 51 and 167 offences under *Law* in this instance. The on-going and systemic non-compliance demonstrates lack of engagement from the Provider to ensure the health, safety and wellbeing of children being educated and cared for by the Service.
- 27) The Authority is satisfied that the substantiated offences support reasonable belief that the continued operation of the Service would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the Service.
- 28) Furthermore, correspondence received on 8 April 2025, with advice that the Administrator, that on 24 March 2025, issued a notice to the landlord [REDACTED] and as a result, control of the premises has returned to the landlord.
- 29) This satisfies the Authority that the service approval is no longer being maintained by the Provider for the purpose of rectifying non-compliance in line with the expectations of the current suspension reasons.
- 30) The Authority notes that this change to use of Service premises was not notified on 24 March 2025, as required under section 173(2) of the *Law*.
- 31) People and entities that choose to participate in regulated activities have a legal responsibility and an obligation to accept the consequences of that responsibility. In this case, as an approved provider, you chose and consented to participating in the education and care of children and have a responsibility to comply with the standard of care under the *Law*.
- 32) Considering all the evidence obtained, the level of seriousness of the contraventions, the Provider's non-response to the Show Cause Notice, and previous compliance history of the Provider, the Authority has decided that cancellation of the Services approval is appropriate and in the best interests of children based on grounds outlined under section 77(a), (b) and (d) of the *Law*.

