

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

Dear Mr [REDACTED]

Decision to Suspend Service Approval

- 1) I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance.
- 2) As you may be aware, on 5 March 2025, Authorised Officers of the Authority undertook a compliance audit at Genius Gungahlin SE-40001554 (the Service) operated by Abacus 49 Pty Ltd PR-40015589 (the Provider).
- 3) The purpose of the audit was to assess if required steps had been undertaken by the Provider to rectify non-compliances which triggered the suspension of the Service from 20 February 2025 to 5 March 2025 (inclusive).
- 4) The Authority is satisfied that the Provider is not complying with the provisions of the *Education and Care Services National Law Act (ACT)* (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 5 February 2025, the Authority issued a Decision to suspend service approval to the Provider. The suspension related to the Service. Refer copy of Decision and Suspension Notice (minus attachments A through E due to size, but can be provided again upon request) at Attachment A.
- 6) It was noted that as the only identified person with management and control (PMC) for the Provider, your response to the Decision was via email dated 5 February 2025, that you would be away until 17 January and would have limited access to emails. Refer Attachment B.
- 7) On 13 February 2025, correspondence was received from [REDACTED] requesting whether an alternative approach to suspension could be considered. The Authority responded to this with advice to review rights allowable under the Law. Refer emails at Attachment C.
- 8) On 20 February 2025, the suspension of service approval took effect for the Service.

- 9) On 27 February 2025, at the request of Ms [REDACTED] a meeting was held with the Authority and Ms [REDACTED] and Ms [REDACTED]. Ms [REDACTED] was seeking guidance and clarity relating to what the compliance gaps were that triggered the suspension, along with what further actions were required from the Provider.
- 10) On 27 February 2025, an email was sent to Ms [REDACTED] advising of information that would be required from the Provider to support adequate staffing arrangements were in place, and that authorised offices would be attending the Service on 5 March 2025 at 10am to undertake an audit of the premises. Refer correspondence at [Attachment D](#).
- 11) The Authority notes that there was no response from Ms [REDACTED] in relation to this email other than advising that educational leader [REDACTED] identified as coming from Sydney, would be in attendance.
- 12) On 5 March 2025 at 10am, authorised offices attended the Service and noted the following:
- a) Noted that at time of audit, [REDACTED] was present along with two other educators.
 - b) Educators presented authorised officers with material to show two rooms and part of an outdoor space had been set up and resourced. Additional material was provided regarding Goals and achievement (Refer copies at [Attachment E](#)).
 - c) [REDACTED] advised she is employed at a Genius service in Sydney and has been in Canberra for two months to provide support to the ACT Genius services as needed.
 - d) There is no current Educational Leader or Centre Manager for Genius Gungahlin.
 - e) While [REDACTED] is the Nominated Supervisor, she is not based in ACT.
 - f) Staff advised that they do not get a response from Senior management or HR when they have questions regarding their employment or ongoing operation of the Service. There is no leadership communication or support.
 - g) Educators present at audit advised that a consultant was engaged, but only for four weeks, and had only visited once out of two planned visits.
 - h) Educators in attendance at audit stated that staff training consisted only of watching a video, given some documentation to read and respond to reflective questions.
 - i) Indoor and outdoor environment and furnishings overall were in poor repair, unmaintained and unclean
 - j) Two rooms at the Service had carpet that was buckled.
 - k) Nappy change mats were observed as dirty.
 - l) Bags of used linen were observed in Nurse cot rooms.
 - m) Expired food and open foods were observed in walk in cool room, along with unclean pantry.
 - n) Upstairs of the Service was observed to be in disrepair, with the upstairs dining room showing mould, water damage and missing segments of ceiling panels which appeared likely affected by water damage also.
 - o) No professional or deep cleaning appeared to have had occurred during the time of the suspension.
 - p) Outdoor environments identified depleted tanbark, excess of sand throughout, including covering footpaths. Weeds were also observed growing through astro turf Refer [Attachment F](#) for photographs taken during audit).

13) On 5 March 2025, at 2:31pm, the Authority received an email from [REDACTED], including attachments of a Staff Scheduling Tool, Rosters for 3 March 2025 through 14 March 2025. Refer Attachment G.

14) The evidence supports ongoing contraventions of the *Law* and *Regulations*.

Law

15) Provisions of the *Law* and *Regulations* engaged by the matter, and as outlined via the Notice, can be referred to at Attachment H.

Obligations upon Regulatory Authority

16) 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*".

17) 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.

18) 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.

19) 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*.

20) 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.

21) 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

- 22) The Authority has considered all evidence gathered via regulatory functions, the suspension process, inclusive of the Provider's response to the suspension and rectifying non-compliances.
- 23) In addition, the Authority has considered the Provider's compliance history, the compliance history of the services operated by the Provider, and the objectives and guiding principles of the Law.
- 24) The Authority is satisfied on the balance of probabilities, that the Provider has not undertaken appropriate steps within the suspension timeframe to put into place action plans for ensuring compliance moving forward. A review of current educator practices and implement staff training, review the safety and appropriateness of service premises and resources, has not been undertaken and decisions regarding how the Service's approval will be maintained after this timeframe has not been demonstrated.
- 25) The Authority is not satisfied that the Provider's evidence of rectification works mitigates the observations of authorised officers of the premises, which identified serious lack of cleanliness and hygiene throughout multiple areas of the Service.
- 26) The Authority is satisfied that, by not always complying with the minimum requirements of the *Regulations* relating to the maintenance and upkeep of environments to be utilised by children are being educated and cared for by the Service, the Provider has failed to meet compliance with section 167 of the *Law* in this instance.
- 27) Considering the previous compliance history, along with the findings of authorised officers during the audit 5 March 2025, the Authority is satisfied that the above substantiated offences support that the Provider is not complying with the conditions of a service approval held, as required by section 51(8) of the *Law*.
- 28) A service approval is granted subject to the condition that the education and care service is operated in a way that –
- (a) Ensures the safety, health and wellbeing of the children being educated and cared for by the service; and
 - (b) Meets the educational and developmental needs of the children being educated and cared for by the service.
- 29) The findings of the audit undertaken to determine if the Services suspension should be lifted satisfies the Authority that the Provider's governance and oversight responsibilities remain insufficient to have identified any of these failings prior to authorised officers attending the Service.
- 30) The Authority is satisfied that the Provider has not put in place action plans to maintain the service premises or monitor and mentor educator practice at a standard to ensure that children will be protected from harms and hazards likely to cause injury or illness.

- 31) The Provider is responsible to ensure not only children's safety, but also educator awareness, understanding and implementation of practice relating to the provision of education, care and interactions with children always occurs, consistent with the expectations of the *Law* and *Regulations*.
- 32) The evidence of training provided to staff during the suspension timeframe did not identify any imbedding of practice, or guidance from mentors in how to interact with children, guide behaviours, or have an understanding of policies and procedures to be confident in meeting expectations of both the Provider and the *Law*.
- 33) 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*.
- 34) Considering all the evidence obtained, the level of seriousness of the contraventions, the Provider's response in its entirety, and previous compliance history of the Service. The Authority has decided that suspension of the Service's approval is appropriate and in the best interests of children based on grounds outlined under section 70(a), (b) and (c) of the *Law*.
- 35) The Authority is satisfied that the non-compliances identified indicate an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the services operated by the Provider, further supporting this decision.
- 36) The Authority is empowered to suspend a service approval under section 70 and 73 of the *Law*. As required pursuant to section 74 of the *Law*, the Service Approval Suspension Notice is at Attachment I to this decision letter.
- 37) The suspension of the Service approval takes effect on the giving of this Notice.
- 38) The Authority has determined that the timeframe for the suspension will be 60 days from time of enforcement.
- 39) The Authority determines the length of time determined for suspension to be appropriate to allow the Provider to make decisions regarding how the service approval will be maintained after this timeframe.

Review Rights

- 40) A decision to suspend a service approval under section 73 of the *Law* is a ***reviewable decision*** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).

41) An application for review may be made by completing the form *AR01 Application for Internal Review of Reviewable Decision* which can be obtained from the ACECQA website.

Legislation

42) The *Law* applies to you as an approved provider and any service you operate.

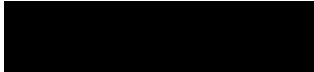
The *National Law* is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp>.

43) The *National Law* is made up of an Act and Regulations which can be viewed at:

- <http://www.acecqa.gov.au/national-law>, and
- <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

44) Should you have any questions about this decision please contact me via email at Jo.Williams@act.gov.au

Yours sincerely



Jo Williams
Director, Regulatory Operations
Education and Care Regulation and Support
Education Directorate

5 March 2025