



Ms [REDACTED]
Nominated Supervisor

[REDACTED]
RE: Little Penguins Ngunnawal

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Potential Compliance Action

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, 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* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. Authorised Officers are investigating suspected offences relating to the operation of Little Penguins Early Education Ngunnawal SE-40015883 (the Service) operated by LP Childcare Management PTY LTD PR-40018855 (the Provider). The Authority’s records indicate that you were employed at the Service in the role of Nominated Supervisor on 29 October 2021.
3. Web addresses to the *Law* and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
4. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge). However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation/s and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the allegation/s may constitute offences under sections 167(2) of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
7. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions include the following (further details appear at the end of this Notice):
 - a. The Authority issuing you with a formal caution;
 - b. An Enforceable Undertaking pursuant to section 179A of the *Law*;

- c. Prohibition from acting in a role as Nominated Supervisor (or conditions being imposed on being in that role) pursuant to section 182(3) of the Law.

Grounds for issuing Show Cause Notice

8. Evidence obtained during the investigation support offences under the *Law* within the area of failing to protect children from harm or hazards by taking reasonable precautions.
9. On 15 December 2021, the Authority received a direct complaint relating to the operation of the Service, and in particular, allegations of injuries to a child resulting from inadequate supervision and a failure to take all reasonable precautions to protect children from harm and hazards.
10. Specifically, it is alleged that on 29 October 2021, a child, [REDACTED], was bitten on the face by a peer, who required additional support, that resulted in a serious injury. The required medical attention was not received, as parents were not promptly and sufficiently informed of the extent of the injury sustained, so that appropriate and timely medical attention could be sought.
11. Due to the high risk of children being exposed to harms and hazards when a Service inadequately supports children with additional needs and fails to recognise serious injuries which may require urgent medical attention, the Authority determined to investigate.
12. The Authority is considering compliance action based on the evidence gathered, that indicate contraventions of the *Law*. Evidence obtained during the investigation gives grounds to support the following allegations:

Allegations:

Allegation One – Failure to Take Reasonable precautions to Protect from Harm and Hazard.

It is alleged that on 29 October 2021, you, as the Nominated Supervisor at the Service, failed to take reasonable precautions to adequately support and guide a child with additional needs, believed to be [REDACTED], being educated and cared for by the Service, which contributed to [REDACTED] biting another child, known to be [REDACTED], on the face resulting in serious injury, in contravention of section 167(2) of the *Law*.

Allegation Two - Failure to Take Reasonable precautions to Protect from Harm and Hazard.

It is alleged that on 29 October 2021, you, as the Nominated Supervisor of the Service, failed to take reasonable precautions to protect children from harm and hazard, in that, [REDACTED] [REDACTED] was bitten on the face by a peer, and did not receive the medical attention required due to the parents not being promptly and sufficiently informed as to the extent of injury sustained, so as to inform a more timely medical response, in contravention of section 167(2) of the *Law*.

Legislation Relevant to Allegations

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

The Nominated Supervisor 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

Evidence Relevant to Allegations:

Evidence Relevant to Allegations One and Two

13. On 5 January 2022, a notice allowable under section 215 of the *Law* (215 Notice) was sent to the Provider requiring information and documentation to be forwarded to the Authority.
14. On 20 January 2022, the Provider responded to the 215 Notice with submission of the following information and prescribed records relevant to the allegations:
 - a) Child attendance records and Working Directly with Children records 29 October 2021.
 - b) Record of responsible Person 29 October 2021.
 - c) Staff records and contact details for educators working 29 October 2021.
 - d) Copy of Incident/Illness/Injury records for child, [REDACTED], dated 29 October 2021
 - e) Copy of Provider's Biting policy.

Refer to Attachment A for relevant documents.

15. From prescribed records supplied by the Provider, a ratio analysis was conducted for the 29 October 2022. Refer to Attachment B.
16. An inspection of the ACECQA NQA ITS system identified you as the current Nominated Supervisor of the Service as well as at the time of the alleged biting incident. Refer to Attachment C.
17. During the investigation, the Authority obtained relevant evidence via numerous witness statements
18. Relevant excerpts from statement of Witness A are as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

Refer to Attachment D for email, photos and medical certificate.

19. Relevant excerpts from statement of Witness B are as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations. At minimum, fitness and propriety includes honesty, knowledge and ability.

23. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities), and also possess the ability to manage educators and any other staff, service premises and relationships with families.
24. During the course of the investigation, evidence gathered included documentation indicating that you were aware of [REDACTED] support needs and the severity of the injury to [REDACTED]
25. This evidence raises a concern about your ability to manage and supervise an education and care service.
26. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

Potential Compliance Action

27. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
 - a. Non-statutory action such as a formal caution letter;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from acting in a role as Nominated Supervisor.
28. Relevant legislation for enforceable undertakings and partial prohibition appears below.
29. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
30. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

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

Section 182(3) - Grounds for issuing a prohibition notice

- (3) The Regulatory Authority may give a prohibition notice to a person to—
 - (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
 - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Right of response

31. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.

32. At Attachment F to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to brian.cropper@act.gov.au or by post to
- Children's Education and Care Assurance
Attention Brian Cropper
GPO Box 158
Canberra ACT 2601.

Caution

33. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under section 296 of the *Law*.
34. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
35. The *Law* applies to you as a provider and any service you operate. 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>.
36. 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>
37. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper, on telephone (02) 62071104 or email brian.cropper@act.gov.au.

Yours sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

7 April 2022