



when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment.

9. Possible compliance actions include the following (further details appear at the end of this Notice):
  - a. The Authority issuing you with an official caution;
  - b. An Enforceable Undertaking pursuant to section 179A of the *Law*; or
  - c. A Prohibition Notice pursuant to section 182 of the *Law*.

### **Background**

10. On 28 November 2022, the Authority received a notification from the Provider alleging that you had forcefully grabbed hold of a child's arm and pulled her away from group story time. CCTV footage was advised as obtained by the Service which confirmed the allegation as detailed.
11. The Provider advised via the Notification that because of the conduct witnessed via CCTV footage, your employment with the Provider was immediately terminated in writing. Refer copy of notification at Attachment A.
12. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate the suspected offence.

### **Allegation of Inappropriate Discipline**

13. It is alleged that, at on 28 November 2022 while in the senior preschool room at the Service, you were observed disciplining a child, known to be [REDACTED] (aged 3years), in a manner unreasonable in the circumstance, by physically removing a child from the room with force, in contravention of section 166(3) of the *Law*.

### **Evidence relevant to Allegation**

14. Evidence relevant to the Allegation obtained from the Provider included:
  - a. CCTV footage – stills of footage available at Attachment B. Please note, actual footage can be provided upon request.
  - b. Prescribed records obtained from the Provider identifying you as working on the day, [REDACTED] being in attendance, record of the alleged incident, and actions taken by the Provider in response to your alleged conduct – refer relevant evidence at Attachment C.
15. During the investigation, the Authority obtained further statements from a witness, relevant extracts from which appear below, with personal information redacted where not required for procedural fairness purposes.

16. Relevant extracts from Witness A's statement are:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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

Contravention Supported by Evidence

17. The evidence currently available to the Authority relevant to the Allegation is sufficient to support the following offence under the *Law*:

**Section 166(3) – Offence to Use Inappropriate Discipline**

- (3) 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.

**Potential Compliance Actions**

18. Should the offence be substantiated on the balance of probabilities, the Authority will need to consider whether any compliance action is required. As well as administrative action such as a formal Caution Letter, the potential statutory compliance actions are an enforceable undertaking or prohibition, as set out below:

**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.
- (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.

**Section 182 of the Law – Grounds for giving prohibition notice**

- (2) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed –
  - (a) to remain on the education and care service premises; or
  - (b) to provide education and care to children.
- (3) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following –
  - (a) an approved provider;
  - (b) a nominated supervisor;
  - (c) an educator;
  - (d) a family day care educator;
  - (e) an employee;
  - (f) a contractor;
  - (g) a volunteer;
  - (h) a person who was formerly a person referred to in paragraphs (a) to (g) in relation to the approved education and care service –or in any other capacity

**Section 183 – Show cause notice to be given before prohibition notice**

- (1) Before giving a prohibition notice, the Regulatory Authority must give the person a notice (a ***show cause notice***) –
  - (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
  - (b) stating the reasons for the proposed prohibition; and
  - (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

Effect of an Enforceable Undertaking

- 19. An Enforceable Undertaking is a formal “promise” to the Authority to do or not do certain things. Terms vary, but examples of requirements are:

- a. only working with children under supervision;
  - b. doing some additional training to improve your skills as an educator;
  - c. keeping the Authority advised of your workplace; or
  - d. having an approved mentor.
20. It is a flexible way to ensure ongoing compliance with the *Law* and *Regulations* and may be appropriate depending on the level of risk to children.
21. If you offer an enforceable undertaking and the Authority accepts it, failure to comply with any of its terms after acceptance allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *Law* to enforce the undertaking.

#### Effect of a Prohibition Notice

22. If, after considering all available evidence and any submission you wish to make, the Authority decides to issue a prohibition notice, while the prohibition notice is in force you must not:
- (a) provide education and care to children for an education and care service; or
  - (b) be engaged as an educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or
  - (c) carry out any other activity relating to education and care services.

#### **Right of response**

23. You have a right to respond to the allegations set out in this notice. You may respond in writing or by way of a recorded interview with two Authorised Officers.

#### Responding in Writing

24. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if compliance action should be taken. If you need additional time, please direct a request with reasons to the contact officer.
25. At Attachment D to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.

#### Responding in an Interview

26. If you wish to respond in a recorded interview with Authorised Officers, please advise the contact officer within seven days. A convenient time will be arranged for you to attend at the Authority's premises in Stirling, ACT, to provide your response in person. You are permitted to bring a support person to that interview, as long as the person does not have any connection with the Provider or the Service.
27. If you respond in writing, please direct your written submission via email to Authorised Officer, Janine Fairburn at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au) or by post to:

Janine Fairburn  
Children's Education and Care Assurance  
GPO Box 158  
CANBERRA ACT 2601

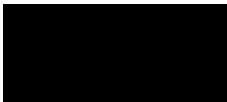
**Caution**

28. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
29. Please be aware that all evidence gathered via the investigation and disclosed in this Notice to ensure you receive procedural fairness, is protected information under the *National Law*.

**Legislation**

30. The *Law* applies to you as an educator and to any service you may be employed at.
31. 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>.
32. 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>
33. Should you have any questions about this Show Cause Notice please contact Janine Fairburn by email at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely,



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

15 February 2023