

[REDACTED]
[REDACTED]
[REDACTED]

Email: [REDACTED]@gmail.com

Dear [REDACTED]

Decision to Propose an Enforceable Undertaking

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently conducted inquiries regarding an allegation that you inappropriately disciplined a preschool child on 28 November 2022 when employed as an educator at Cooida Cottage SE-00009769 (the Service) operated by North Belconnen Community Association Incorporated PR-00005854 (the Provider).
2. Web addresses to the *Education and Care Services National Law 2010 (ACT)* (the *National Law*) and the *Education and Care Services National Regulations* (the *National Regulations*) are provided for your convenience at the end of this decision.

Facts

3. On 15 February 2023, you were issued with a Show Cause Notice (the Notice) by the Authority, which advised you that the Authority had been notified from the Provider on 28 November 2022 of an allegation. It was alleged 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.
4. The Notice advised of the allegation being raised as follows:

Allegation of Inappropriate Discipline

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*.

5. The Notice advised that potential compliance actions included an enforceable undertaking or prohibition notice. The Notice referred to and included copies of the evidence relied upon and provided you with an opportunity to respond before any compliance action was taken.

Refer Attachment A for a copy of the Notice (without attachments due to size).

6. On 15 February, you emailed the Authority requesting your response be provided via an interview with Authorised Officers. This request was agreed to, and an interview was undertaken on 24 February 2023.

7. On 24 March 2023, a copy of the audio recording and transcript was posted to you via registered post. Refer transcript of Interview at [Attachment B](#).

Law

8. Relevant Legislative Provisions engaged by this decision are as follows:

Section 166(3) – Offence to Use Inappropriate Discipline

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.

Section 184 - Deciding whether to give prohibition notice

- (1) If the Regulatory Authority gives a show cause notice under section 183 to a person, the Regulatory Authority must have regard to any written submission received from the person within the time stated in the show cause notice before deciding whether to give the person a prohibition notice.
- (2) If the Regulatory Authority decides not to issue a prohibition notice to the person, the Regulatory Authority must give the person notice of the decision.
- (3) The Regulatory Authority may accept an undertaking from a person under section 179A instead of giving a prohibition notice under this Division.

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.

Reasons

9. Upon careful consideration of all available evidence, including your response to the Notice, the Authority is satisfied, on balance of probabilities, that you subjected ██████████ to discipline that was unreasonable in the circumstances on 28 November 2022, in contravention of section 166(3) of the *Law*.
10. Furthermore, the Authority determined that you may pose an unacceptable risk of harm to children and issued you the Notice, as required by the *National Law* when the Authority is considering issuing a prohibition notice.
11. The Authority has considered your Response, which raised, but was not limited to, the following points:
 - a. You have a Diploma qualification in Early Childhood Education and Care and have worked in the early childhood sector for 18 years.
 - b. As you were new to the Service, you felt that you couldn't refuse to undertake any direction given to you by any other educator;
 - c. You felt that you didn't receive a sufficient induction at the Service in the two weeks that you were employed;
 - d. You acknowledged that the interaction between yourself and ██████████ on 28 November 2023 was to discipline the child and was unreasonable in the circumstances.
12. The Authority is highly concerned by your submission where you state had no control over how you interacted with ██████████ on 28 November 2023, as you were directed to do so by another educator. The Authority is satisfied that with your level of qualification and years working within the sector, this does not mitigate the accountability on you for your actions towards ██████████ on this day.
13. It is evident from viewing the CCTV footage that ██████████ was pulled up from a seated position forcefully. That level of force is never acceptable under any circumstances. It is also never acceptable to handle a child roughly in the way that you did, as is evidence from the CCTV footage.
14. Considering the entirety of the evidence and submissions, the Authority has determined that the most appropriate course of action is to offer an enforceable undertaking under sections 179A and 184(3) of the *Law*. The proposed enforceable undertaking is attached and marked Attachment C.
15. The proposed enforceable undertaking is carefully formulated to address what the Authority views as a substantial risk to children, whilst providing you with an opportunity to undergo appropriate training to improve your level of understanding and ability in guiding young children's behaviour. Please be aware that the only alternative available to the Authority is prohibition.

16. If the Enforceable Undertaking is accepted, failure to comply with any of its terms allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *National Law* to enforce the undertaking. It is also open to the Authority to withdraw its consent to the Enforceable Undertaking and to issue a prohibition notice.
17. To accept the undertaking please sign for the "Person" on Attachment C and return to Authorised Officer Janine Fairburn within 14 days of receiving this decision. The undertaking may be returned via email at janine.fairburn@act.gov.au or by post to:

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

18. If you elect to return the signed undertaking by post, please advise by email.
19. A countersigned copy will be returned for your records.
20. **Please note that the offer to accept an enforceable undertaking in lieu of prohibition is made under section 184(3) of the Law. If you wish to enter the enforceable undertaking, it is essential that you sign and return the undertaking within the required time frame. If the signed undertaking is not received within the required 14 days, the Authority may review its decision.**

Legislation

21. The *National Law* applies to you as an educator employed within the early education and care sector. 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>.
22. The *National Law* and *National Regulations* can be viewed at:
<http://www.acecqa.gov.au/national-law,and>
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
23. For your convenience, please also find ACECQA resource specifically related to inappropriate discipline at Attachment D.
24. If you have any questions in relation to this letter, please contact Authorised Officer Janine Fairburn by email at janine.fairburn@act.gov.au.

Yours Sincerely



Jo Williams
Director
Education and Care, Regulation and Support

29 March 2023