



Ms [REDACTED]  
[REDACTED]  
[REDACTED]

Email [REDACTED]@gmail.com

Dear Ms [REDACTED]

**Show Cause Notice – Proposed Compliance Action**

1. Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, recently conducted an investigation into an allegation of inappropriate discipline, by you towards a child, on 13 and 14 October 2020 at Busy Bee's at the Park, SE-00009849 (the Service) operated by FEL Childcare Centres 4 Pty Ltd, PR-40004076 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
3. I am considering compliance action based on suspected contraventions of the *Law* supported by evidence gathered during the investigation. Potential compliance actions include a Prohibition Notice pursuant to section 182 of the *Law* or an enforceable undertaking pursuant to section 179A of said *Law*.

**Background**

4. On 15 October 2020 by, a notification of complaint was received by the Authority from the Provider regarding your conduct while employed as a Room Leader at the Service. Refer to Attachment A.
5. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to conduct an investigation.
6. I consider that your alleged conduct may constitute inappropriate discipline, which is an offence under section 166(3) of the *Law*. Under the *Law*, discipline is interpreted as any strategy employed by an educator with the intention of changing a child's behaviour. Discipline that is inappropriate includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child, such as (but not restricted to) yelling, using threatening or humiliating language, isolating, or shaming children.



[Redacted]

12. Relevant excerpts from Witness B's statement:

[Redacted]

Witness Evidence Relevant to Allegation 2

13. Relevant excerpts from Witness C's statement:

[Redacted]

14. Relevant excerpts from Witness D's statement:

[Redacted]

[REDACTED]

Contravention engaged by Allegations

- 15. The evidence obtained by the Authority supports a contravention of the following section of the *Law*:

**Section 166 of the Law - 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.

Penalty: \$10 000

**Potential Compliance Actions**

- 16. Should the allegations be substantiated, statutory compliance actions available to the Authority to consider include a prohibition notice or enforceable undertaking as set out below:

**182 Grounds for giving prohibition notice**

- (1) 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.

(2) 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—

- b) a nominated supervisor;
- c) an educator;
- d) an employee;
- e) a contractor;
- f) a volunteer;

(3) The Regulatory Authority may give a prohibition notice to a person to—

- a) prohibit the person from being nominated as 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.

17. Should a decision be made to issue a prohibition notice, under section 182(1) of the *Law*, you may be prohibited from:

- (1) providing education and care to children at an education and care service;
- (2) being engaged as an educator, family day care educator, employee, contractor or staff member or volunteer at an education and care service; or
- (3) carrying out any other activity relating to an education and care service.

#### **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*.

(3) 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.

**Right of response**

18. You have a right to respond to the allegations 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 a compliance action should be taken.
19. At Attachment C to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.
20. Please direct your written submission via email to Authorised Officer Brian Cropper at [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au) or by post to:

Brian Cropper, Senior Investigator  
Children's Education and Care Assurance  
GPO Box 158, CANBERRA ACT 2601

**Caution**

21. 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.

**Legislation**

22. The *Education and Care Services National Law Act 2010* (the *Law*) applies to you as an educator.  
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>.  
The *Law* and *Regulations* can be viewed at: [http://www.acecqa.gov.au/national-law\\_and](http://www.acecqa.gov.au/national-law_and)  
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
23. Should you have any questions about this Show Cause Notice please contact Brian Cropper by telephone on (02) 620 71104 or email to [brian.cropper@act.gov.au](mailto:brian.cropper@act.gov.au).

Yours sincerely,



Clare Brookes  
Senior Director  
Early Childhood Policy and regulation  
ACT Education Directorate  
3 February 2021