



[REDACTED]

Email: [REDACTED] [REDACTED]

Dea [REDACTED]

### Decision to issue Caution Letter

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. As you may be aware, the Authority is the regulator of education and care services in the ACT and is responsible for monitoring and enforcing compliance with the *Education and Care Services National Law (ACT) (the Law)*. One of the Authority's roles is to investigate suspected offences under the *Law*.
2. Authorised Officers recently investigating an allegation that you inappropriately disciplined a child on 10 November 2021 at Bright Minds Academy Belconnen SE-40012576 (the Service) operated by BMA Belconnen Pty Ltd ATF BMA Belconnen Unit Trust PR-40013290 (the Provider).
3. 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.

### Facts

4. On 10 November 2021, the Authority received a direct complaint regarding an educator yelling at a child at approximately 8:30am on 10 November 2021.
5. As required under the *Law*, the Provider notified the complaint within 24 hours, on 11 November 2021. The Provider submitted evidence with the notification, including a statement by yourself and a record of interview with yourself. Refer Attachment A.
6. The Authority determined to investigate offences of inappropriate discipline and failure to take every reasonable precaution to protect children from harm and from hazards likely to cause injury (the second of which is not an individual educator offence).
7. The specific allegation is that, at approximately 8:30am on 10 November 2021, you yelled at [REDACTED] and shut him in the bathroom, in response to aggressive behaviour, including lashing out physically at another child, in contravention of section 166(3) of the *Law*.
8. According to the documents in Attachment A, these actions were admitted by you, and you outlined the surrounding circumstances.
9. As part of the investigation, the Authority obtained documentation from the Provider and conducted formal interviews with witnesses. Witnesses corroborated what you have mentioned about difficulties experienced in circumstances of high levels of challenging behaviours and casual educators without

the necessary experience or knowledge of the relevant children. Witnesses confirmed that challenging behaviours, particularly in Adventurers room, had been an ongoing issue for some time.

## **Law**

10. Evidence obtained during the investigation engages section 166(3) of *the Law*, which provides as follows:

### **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.

## **Reasons**

11. The Authority is satisfied, on the balance of probabilities, that you have contravened section 166(3) of the *Law*, as your actions on 10 November 2021 can be described as discipline that is unreasonable in the circumstances.
12. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children.
13. Generally, if the Authority is satisfied that there is sufficient evidence to support an allegation similar to this, the educator would receive a show cause notice outlining the allegation and relevant evidence and advising of potential compliance actions (including prohibition), with an opportunity to respond to the allegation before any decision is made.
14. The Authority has considered evidence of your response to the allegation, including admission to the alleged conduct and mitigating circumstances in your statement and record of interview, which were corroborated by witnesses. In those circumstances, rather than issuing a show cause notice and potentially causing distress without justification, the Authority has determined to issue you with this Caution Letter.
15. This Caution Letter serves to remind you of your obligations, as an educator, to ensure that your actions do not compromise the safety, health and well-being of children being educated and cared for by yourself.
16. Unreasonable discipline includes physical punishment or any behaviour management strategy likely to cause physical and/or psychological harm to a child. Smacking, pulling, yelling and threatening a child are the most common forms of conduct viewed as inappropriate discipline.
17. However, inappropriate discipline can be more subtle and include other forms of physical or psychological forms of coercion. Rough handling of children is a disciplinary issue when it is in a context that is intended to shape a child's behaviour. Likewise, harmful physical or psychological techniques to shape children's responses are also inappropriate discipline.

18. It should be noted that confining a child to a room in these circumstances also constitutes a restrictive practice under the *Senior Practitioner's Act 2018*.
19. This letter will be recorded on the Authority's files and may be taken into consideration if any new evidence is received that warrants conducting further investigation into this matter, or if any other matters involving your conduct with children are notified to the Authority in the future.

**Legislation**

20. The *Law* applies to you as an educator employed within the early education and care sector.
21. 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>.
22. 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>
23. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman by email at [tanya.masterman@act.gov.au](mailto:tanya.masterman@act.gov.au).

Yours sincerely



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

12 April 2022