



Ms [REDACTED]
Nominated Supervisor
Aranda Afters
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 (CECA). 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. As you may be aware, the Authority is currently investigating a suspected offence at Aranda Afters SE-00009641 (the Service) operated by Aranda Afters Association Incorporated PR-00005802 (the Provider).
3. The suspected offences relate to two boys aged (8:8) and (8:6) leaving the Service, and returning to the Service, unnoticed by educators.
4. 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.
5. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined that there is sufficient evidence to support a case to answer regarding a suspected offences under the *Law*.
6. However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you as a person who is a Nominated Supervisor.
7. Detailed instructions of how to respond appear at the end of this Notice.
8. If substantiated, the allegation may constitute an offence under sections 165 and 167 of the *Law*. If, after considering all available evidence, the Authority finds any offence is substantiated, it will need to consider whether compliance action is required.
9. 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. Details relating to potential compliance action appear at the end of this notice.

Background

10. On 24 May 2023, the Authority received a notification from the Provider advising that two children alleged they were threatened away from the Service by an unknown male. Refer to Attachment A.
11. It was determined by the Authority that there were reasonable grounds to suspect that offences had, or may have, occurred at the Service and a decision was made to investigate a suspected offence under sections 165 and 167 of the *Law*.

Allegation relating to Law.

12. The evidence obtained during the investigation raise the following allegation of an offence under the *Law* –

It is alleged that on 23 May 2023, you, as Nominated Supervisor, failed to ensure that all children being educated and cared for by the Service were adequately supervised at all times, in that, children believed to be, [REDACTED] (aged 8:8) and [REDACTED] (aged 8:6), left, and returned, to the service unsupervised and unnoticed, contravening section 165(2) of the *Law* and engaging a further contravention of section 167(2) of said *Law*.

Legislation Relevant to Allegation

13. The following provision of the *Law* is relevant to Allegation:

Section 165(2) of the *Law* – Offence to inadequately supervise children.

A nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000, in the case of an individual

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

A 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 Allegation

14. Witness evidence and relevant documents support that on 23 May 2023, children [REDACTED] and [REDACTED] left, and returned, to the Service unsupervised and unwitnessed by educators.
15. Documents relevant to the allegations submitted by the Provider under notice allowable under section 215 of the *Law* include:
 - a) Child attendance record;
 - b) Working directly with children record;
 - c) Internal investigation documents including:
 - I. Parent conversation record.
 - II. Parent email.

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

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[Redacted text block]

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[Redacted text block]

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[Redacted text block]

[Redacted text block]

[REDACTED]

21. Analysis of the Provider documentation and statements obtained from witnesses, do not adequately identify how you, as Nominated Supervisor, ensure child numbers at the Service are monitored during transition throughout the afternoon. Furthermore, it is not evident how supervision points in the outdoor space, and boundaries, are adequately identified and communicated to staff and children.

Potential Compliance Action

22. 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.
23. Relevant legislation for enforceable undertakings and partial prohibition appears below.
24. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
25. 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

26. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety.
27. 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.
28. At Attachment E 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

29. 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*.
30. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
31. 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.
32. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. 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>.
33. 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>
34. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper on email brian.cropper@act.gov.au.

Yours sincerely



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

20 July 2023