

[REDACTED]
[REDACTED]
[REDACTED]

RE: ACT Family Day Care Service

Email: [REDACTED]@gmail.com

Dear [REDACTED],

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA).
2. As you may be 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.
3. The Authority is currently investigating multiple suspected offences at ACT Family Day Care Service – SE-00014180 (the Service) operated by [REDACTED] – PR-00008098 (the Provider). 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.
4. Authorised Officers have obtained evidence from several sources and the Authority has determined that you have a case to answer regarding a suspected offence under the Law. 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. Detailed instructions of how to respond also appear at the end of this Notice.
5. If substantiated, the alleged conduct may constitute a risk to the safety, health or wellbeing of children being educated and cared for by the family day care educator, which may result in suspension under section 178 of the Law.
6. If, after considering all available evidence, the Authority finds a risk to the safety, health or wellbeing of children has occurred, it will need to consider whether compliance action is required. 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. Further details regarding potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

7. Evidence obtained during the investigation to date supports offences under the *Law* within the following area: Risk to the safety, health or wellbeing of a child.

Facts

8. On 14 June 2024, the ACT Regulatory Authority (the Authority) received a complaint alleging that on 12 June 2024, a child, known to be [REDACTED] 3 years and 3 months old, left the Service unaccompanied and walked to his home address where he was found by his neighbour.
Refer Attachment A
9. On 17 June 2024, the Authority received a notification alleging that on 12 June 2024 there had been inadequate supervision of a child.
Refer Attachment B
10. Due to the risk of safety, health and wellbeing of a child when unsupervised, the Authority determined to investigate the matter, which engaged suspected offences under section 178 of the *Law*.

Allegation of Fitness and Propriety

11. It is alleged that there is a risk to the safety, health and wellbeing of children being educated and cared for by you, [REDACTED] ([REDACTED] [REDACTED]) an educator at a family day care service arising out of an incident on 12 June 2024 whereby a child, believed to be [REDACTED] 3 years and 3 months old, left your care at [REDACTED] [REDACTED] unnoticed and unsupervised in which he then walked approximately 100m alone, to his home.

Legislation Relevant to Allegation

12. The following provisions of the *Law* are relevant to the Allegation:

Section 178 of the Law – Notice to suspend education and care by a family day care educator

- (1) This section applies if the Regulatory Authority is satisfied that because of the conduct of, or the inadequacy of the service provided by, a family day care educator engaged by or registered with a family day care service –
 - a) The approved provider or a nominated supervisor of an approved family day care service is not complying with any provision of this Law; or
 - b) There is a risk to the safety, health or wellbeing of children being educated and cared for by the family day care educator.
- (2) The Regulatory Authority may give the approved provider, the nominated supervisor (if applicable) and the educator a notice (***show cause notice***) stating –

- a) That the Regulatory Authority intends to give the approved provider a notice directing the provider to suspend the provision of education and care by the educator; and
 - b) The reasons for the proposed directions; and
 - c) That the approved provider, nominated supervisor or educator, (as the case requires) may, within 14 days after the show cause notice is given, make submissions to the Regulatory Authority in respect of the proposed direction.
- (3) The show cause notice must be served by delivering it personally to the family day care educator.
- (4) The Regulatory Authority –
- a) Must consider any submissions from the approved provider, the nominated supervisor and the family day care educator received within the time frame allowed by subsection (2)(c); and
 - b) May consider any other submission and any matters the Regulatory Authority Considers relevant; and
 - c) May –
 - i) Give the approved provider a notice directing the provider to suspend the provision of education and care of children by the family day care educator; or
 - ii) Decide not to give that direction.
- (5) The Regulatory Authority must give the family day care educator a notice of the decision under subsection (4).
- (6) If the Regulatory Authority decides not to give the direction to suspend, the Regulatory Authority must give the approved provider notice of the decision.
- (7) A person must comply with a direction under subsection (4).
Penalty: \$6800, in the case of an individual.
\$34 400, in any other case.

Evidence relevant to the Allegation

13. On 14 June 2024, CCTV footage was provided to the Regulatory Authority which shows [REDACTED] [REDACTED] arriving home in the company of a member of the public. The CCTV also shows you [REDACTED] [REDACTED] arriving at the address in your car before leaving shortly after. This footage shows that the child was not in your care for a period of time and that he was not protected from any hazard or any harm during this time.

Refer Attachment C for screenshots of the CCTV footage relevant to the allegation. Full CCTV footage can be viewed upon request.

14. On 20 June 2024, the Provider furnished documents including the following relevant documents:
- a) Incident Report
 - b) Incident Record

- c) Supervision Policy
- d) ██████████ Residence

Refer Attachment D for relevant documents which are redacted in parts to protect individual identities.

Contraventions Support Allegations

- 15. Evidence gathered appears to support that there is a risk to the safety, health and wellbeing of children being educated and cared for by you, ██████████ (██████████ ██████████) an educator at a family day care service arising out of the alleged incident.

Potential Compliance Actions

- 16. 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 may be an unacceptable risk of harm to a child or children.
- 17. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.
- 18. Potential compliance actions are under Part 7 of the *Law*, and include:

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.

Section 182 of the Law – 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 –
 - (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; or
 - b. doing some additional training to improve your skills as an educator; or
 - 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. Please note that the Authority has made no decision at the time of sending the Notice and will make no decision without giving you a reasonable opportunity to respond.
24. If you do not respond to the Notice at all, or within the allowed timeframe, the Authority can only consider the evidence it already has when deciding if any offences have been substantiated on the balance of probabilities and, if so, what (if any) compliance action should be taken.
25. 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.
26. 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.
27. 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.
28. 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.
29. If you respond in writing, please direct your written submission via email to Authorised Officer Declan Barbagallo at declan.barbagallo@act.gov.au or by post to:

Children's Education and Care Assurance (CECA)
Education Directorate
Attention: Declan Barbagallo

GPO Box 158, Canberra ACT 2601.

Caution

30. 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.
31. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
32. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.

Legislation

33. The *Law* applies to you as an educator and to any service you may be employed at.
34. 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>.
35. 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>
36. Should you have any questions about this Show Cause Notice please contact Authorised Officer Declan Barbagallo at declan.barbagallo@act.gov.

Yours sincerely,



Nicole Withers
A/g Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
30 July 2024