

[REDACTED]

Email: [REDACTED]

Dear [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.
2. 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*.
3. Authorised Officers are currently investigating an allegation that you used inappropriate discipline on a child on 9 June 2023 at Burgmann Anglican School Early Learning Centre SE-40016077 (the Service) operated by The Burgmann Anglican School PR-00005811 (the Provider)
4. 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.
5. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge). 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.
6. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the alleged conduct may constitute inappropriate discipline, which is an offence under section 166(3) of the *Law*.
8. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour. Discipline that is inappropriate within the meaning of section 166 of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Examples include yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.
9. If, after considering all available evidence, the Authority finds an offence 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.

10. Possible compliance actions include the following (further details appear at the end of this Notice):
 - a. The Authority issuing you with non-statutory caution;
 - b. An Enforceable Undertaking pursuant to section 179A of the *Law*; and
 - c. A Prohibition Notice pursuant to section 182 of the *Law*.

Facts

11. On 16 June 2022, the Authority received a notification from the Provider alleging that you grabbed and pulled a child by the arms and saying “why are you doing this to me, you are embarrassing me” in an angry tone. Refer Attachment A.
12. The Provider further advised that a proactive risk mitigation strategy implemented whilst they undertook their investigation was to suspend your employment at the Service pending the outcomes of the Providers investigation.
13. Due to the risk of harm to children if subjected to inappropriate discipline, the Authority determined to conduct a regulatory investigation into the alleged conduct.

Allegation of Inappropriate Discipline

14. It is alleged that, on 9 June 2023, you were witnessed in the outside playground using inappropriate discipline against a child, known to be [REDACTED] where, in a manner unreasonable in the circumstance, grabbed and pulled a child by the arms restricting the child’s movement and saying “why are you doing this to me, you are embarrassing me” in an angry tone, in contravention of section 166(3) of the *Law*.

Evidence relevant to Allegation

15. Evidence relevant to the Allegation were obtained from the Provider and included:
 - a. Working Directly with Children records identifying you as working at the Service on 9 June 2023 (refer Attachment B);
 - b. Child Attendance records identifying [REDACTED] being in attendance at the Service on 9 June 2023 (refer Attachment B);
 - c. Original notification of allegations received from the Provider on 16 June 2023 (refer Attachment A)
16. During the investigation, the Authority obtained further statements from witnesses, relevant extracts from which appear below, with personal information redacted where not required for procedural fairness purposes.

17. Throughout the investigation process, further allegations of inappropriate discipline were noted against yourself while working directly with children at the Service.

18. Relevant extracts from Witness A's statement are:



19. Relevant extracts from Witness B's statement are:





20. Relevant extracts from Witness C's statement are:





Contravention Supported by Evidence

21. The evidence currently available to the Authority relevant to the Allegation is sufficient to support the following offence under the *Law*:

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-

- (b) any discipline that is unreasonable in the circumstances.

Potential Compliance Actions

22. Should the offence be substantiated on the balance of probabilities, the Authority will need to consider whether any compliance action is required.
23. As well as administrative action such as a formal Caution Letter, the potential statutory compliance actions are an enforceable undertaking or prohibition, as set out below:

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.
- (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.

Section 182 of the Law – Grounds for giving prohibition notice

- (2) 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.
- (3) 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

24. 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.
25. 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.
26. 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

27. 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

28. 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.
29. 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.
30. 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.
31. 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.
32. 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.

33. 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.
34. If you respond in writing, please direct your written submission via email to Authorised Officer Vittorio Colosimo at Vittorio.Colosimo@act.gov.au or by post to:

Vittorio Colosimo
Children's Education and Care Assurance
GPO Box 158, CANBERRA ACT 2601

Caution

35. 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

36. The *Law* applies to you as an educator and to any service you may be employed at.
37. 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>.
38. 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>
39. Should you have any questions about this Show Cause Notice please contact Authorised Officer Vittorio Colosimo at Vittorio.Colosimo@act.gov.au.

Yours sincerely,



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

27 October 2023