

[REDACTED]
[REDACTED]
[REDACTED]

By email to [REDACTED]

Dear [REDACTED]

Show Cause Notice – Potential Prohibition

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 are currently investigating an allegation that you inappropriately disciplined a child on 22 January 2024, when employed as an educator at Busy Bees at Amaroo, SE-40007033 (the Service) operated by FEL Child Care Centres 4 Pty Ltd, PR-40004076 (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.
4. 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.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the alleged conduct may constitute inappropriate discipline, which is an offence under section 166(3) of the *Law*.
7. “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.
8. 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. Details relating to possible compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

9. The evidence obtained during the investigation to date supports offences under the *Law* within the following area:
 - a) Educator- child interactions amounting to discipline.

Background

10. On 2 September 2024, the Authority received information advising of an allegation, educator ██████ used inappropriate discipline, by way of yelling at a child, ██████ (3:2).
11. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate the matter.

Allegation of non-compliance

12. On Monday, 22 January 2024, educator ██████ subjected a child to a form of corporal punishment or discipline that was unreasonable in the circumstances in that the educator, ██████ said to child, ██████ ██████ which in English translates to “you will be beaten up by shoes you dog”, in contravention of **Section 166(3)** of the National Law.

Legislation Relevant to Allegation

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

Section 166(3) of the Law – 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-

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Evidence relevant to Allegation

14. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Records produced by the Provider supported the following:

- a. The Service was operating on 22 January 2024.
 - b. You were an educator at the Service and working directly with children in the Investigators room on 22 January 2024. [REDACTED] [REDACTED] was enrolled at the Service and signed into the Investigators room on 22 January 2024. Attachment A.
 - c. Provider internally investigated and obtained records of conversations from staff. Refer relevant evidence at Attachment B.
15. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Please note that some witness statements were obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
16. Relevant extracts from Witness A's statement are:



17. The Authority also confirmed with a staff member that their record of conversation was a true and accurate version of events that occurred on 22 January 2024. Refer attachment C.

Contravention Supported by Evidence

18. Evidence gathered via the initial assessment and subsequent regulatory investigation appears to support contraventions of section 166(3).

Potential Compliance Action

19. 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. Potential compliance actions include:

- a. A Prohibition Notice pursuant to section 182 of the *Law*.

Effect of a Prohibition Notice

20. 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.

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.

Right of response

- 21. 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.

Responding in Writing

- 22. 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.
- 23. At Attachment D to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.

Responding in an Interview

- 24. 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.
- 25. If you respond in writing, please direct your written submission via email to Authorised Officer, Jarrod REID at Jarrod.Reid@act.gov.au or by post to:

Jarrold REID
Children's Education and Care Assurance (CECA)
Education Directorate
GPO Box 158, CANBERRA ACT 2601

Caution

- 26. 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.
- 27. Please be aware that all evidence gathered via the investigation and disclosed in this Notice to ensure you receive procedural fairness, is protected information under the *National Law*.

Legislation

- 28. The *Law* applies to you as an educator and to any service you may be employed at.

29. 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>.
30. 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>
31. Should you have any questions about this Show Cause Notice please contact Jarrod REID by email at Jarrod.Reid@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

9 January 2025.