

██████████
Person with Management or Control
FEL Child Care Centres 4 Pty Ltd
RE: Busy Bees at Amaroo

By email to ██████████

Dear ██████████,

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. 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 on 22 January 2024, a child, ██████████ ██████████ (3:2), was inappropriately disciplined by educator ██████████ ██████████ while attending 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(1) and 174 of the Law, ensuring that no child being educated or cared for by the service is subjected to any form of discipline that is unnecessary in the circumstance.
7. Further to that, it is alleged that the Provider failed to notify the Authority of the allegation after receiving information regarding the allegation from Children and Youth Protection Services (CYPS), which is an offence under section 174(2)(b)(i) of the Law, offence to notify certain information to the Regulatory Authority.
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) Ensuring that all children being educated and cared for by the service are not subjected to inappropriate discipline.
 - b) Notifying the Regulatory Authority of certain information.

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(1)** of the National Law.
13. On Monday, 22 January 2024, the Provider failed to notify the Authority of certain information in relation to the allegation of inappropriate discipline.

Legislation Relevant to Allegations

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

Section 166(1) of the Law – Offence to use inappropriate discipline.

The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

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

Penalty: \$11 400, in the case of an individual.
\$57 400, in any other case.

Section 174 of the Law - Offence to fail to notify certain information to Regulatory Authority.

(2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

(b) any complaints alleging—

(i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or

(ii) that this Law has been contravened.

Penalty: \$4500, in the case of an individual.
\$22 900, in any other case.

Evidence relevant to Allegation one and two

15. 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) Working directly with children records show that educator [REDACTED] was working directly with [REDACTED] on 22 January 2024. Refer Attachment A.

c) Records of conversation with staff members in relation to the incident. Refer Attachment B.

16. Relevant excerpts from the information provided to the Authority are:





17. During the investigation, the Authority obtained witness statements, relevant excerpts 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.

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



19. 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

20. Evidence gathered via the initial assessment subsequent regulatory investigation appears to support contraventions of section 166(1) and 174 of the *Law*.

Potential Compliance Actions

21. 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. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
 - c. A Compliance Notice under section 177 of the *Law*; or
 - d. Imposing of Conditions on the Service’s approval under section 51 of the *Law*.
 - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
 - f. Cancellation of the service approval under section 79 of the *Law*.

Right of response

22. As mentioned previously, this is the Provider’s opportunity to respond to the allegations and evidence set out in this Notice. 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.
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. Please direct your written submission via email to Jarrod.Reid@act.gov.au or by post to:

Jarrold REID
Children’s Education and Care Assurance
Attention: Jarrod Reid
GPO Box 158, Canberra ACT 2601.

Caution

24. 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*.
25. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
26. 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.

27. The *Law* applies to you as a provider and any service you operate. 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>.
28. 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>
29. Should you have any questions about this Show Cause Notice please contact Authorised Officer Jarrod REID 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