



Mr [REDACTED]
Nominated Supervisor
Artemis Early Learning

Email: [REDACTED]

Dear Mr [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. 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 Artemis Early Learning Fyshwick SE-40002132 (the Service) operated by Canberra Childcare Pty Ltd ATF The Fyshwick Child Care Trust PR-00005814 (the Provider)
3. The suspected offence relates the alleged inadequate response to a child (4.3 years) behaviour toward a peer while in attendance at the Service.
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 offence 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 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 3 November 2022, the Authority received a parent complaint alleging that the Service was not protecting their child from the behaviours of a peer.
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 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* –

Allegation

It is alleged that between September and October 2022, you, as the Nominated Supervisor failed to ensure every reasonable precaution was taken to protect children from harm and from any hazard likely to cause injury, Adequate strategies and plans were not implemented to guide behavior of a child, believed to be [REDACTED] toward a peer, believed to be [REDACTED] [REDACTED] contravening S167(2) of the *Law*.

Legislation Relevant to Allegation

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

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 between September and October 2022, there was sufficient risk of harm to a child, [REDACTED] from the behaviours of a peer, [REDACTED] necessitating implementation and communication of behavioural support and guidance strategies.
15. Documents relevant to the allegation submitted by the Provider under notice allowable under section 215 of the *Law* include:
 - a) Child attendance records;
 - b) Working directly with children records;
 - c) Incident reports;
 - d) Enrolment records;
 - e) Parent communication;
 - f) Doctors Letter 12/12/2022
 - g) Policy and Procedure including:
 - i. Inclusion support planning policy.

- II. Positive guidance of behaviour.
- III. Procedures for management of specific behaviours.
- IV. Specific strategies for positive guidance of behaviour.

16. A report furnished by the Provider indicate an incident, erroneously recorded as 30 October 2022, occurred where child, [REDACTED] is alleged to have thrown urine on [REDACTED] Refer to Attachment A.
17. This incident was discussed on 31 October 2022, between you and [REDACTED] mother, and Service educator, [REDACTED]. It is recorded that [REDACTED] was being assessed for [REDACTED] Although, Ms [REDACTED] nominates strategies to implement should the behaviour reoccur, there is no evidence this information was implemented or communicated to educators. Refer to Attachment B.
18. Behavioural supports were also recommended by Child Health Medical Officer, Dr [REDACTED] [REDACTED] in letter dated 12 December 2022 based on a visit on 26 May 2022. Refer to Attachment C.
19. Correspondence with parent of [REDACTED] Ms [REDACTED], dated 14 November 2022, advises of steps taken to ensure [REDACTED] behaviour is not repeated. Again, there is no apparent evidence of these steps being implemented, and communicated to staff, that mitigated risk to children from the behaviour of [REDACTED] included with the Providers response pursuant to the 215 Notice issued by the Authority. Refer to Attachment D for record of conversation.
20. The Provider's Procedures for management of specific behaviours, under the heading of, *Continued inappropriate behaviour*, indicate the urine incident was considered serious. Refer to Attachment E.
21. Records on NQA ITs data base and Provider documents, identify you as Centre Director and a Nominated Supervisor during September and October 2022. Refer to Attachment F.
22. Educator statements were obtained exercising powers under section 215 of the *Law*. To clarify, educator witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.
23. Relevant extracts from Complainant 's statement include:
 - a) My son, [REDACTED], (DOB: [REDACTED]) has attended the Service for over three years.
 - b) About this time in early September 2022, I was advised by [REDACTED] in front of his teacher, [REDACTED] that [REDACTED] threw his drink bottle over the fence and was run over by a car. At the time this version was confirmed by another child, [REDACTED]
 - c) As a result of what [REDACTED] had told me and the water bottle incident, I contacted the Service by email and requested a meeting with Ms [REDACTED] Attachment [Redacted] 1 Email dated 19/09/2022.

- d) After this conversation, [REDACTED] returned from the Service and I asked him how his new room was and he told me he was still in the same class.
- e) Around early October 2022, I attended the Service to drop [REDACTED] off. It was around 10am and we were running late. I went to the TV room/lunchroom where the children were gathering to watch TV as it was raining that day.
- f) As [REDACTED] and I entered the room, I saw [REDACTED] standing on a child chair crying and throwing toys. [REDACTED] was trying to deescalate [REDACTED]. Other children in the room were lined up and [REDACTED] joined them to go to another TV room. I can't recall if there were other educators in the room. I just left as the children were filing out.
- g) I believe that the children we[r]e being taken to another room for safety reasons due to the behaviour of [REDACTED].
- h) At pick up on 28 October 2022 I attended the Service to collect my son, [REDACTED]. When I entered the room, [REDACTED] was quiet. At the time there were four teachers in the room. I was then advised by [REDACTED] that [REDACTED] had a bucket of urine thrown on him by [REDACTED] during the day. I could see that [REDACTED] pants had been changed and he was in track shorts. He went to the Service in jeans. His wet clothes were in a bag.
- i) During the trip back to my parent's house, [REDACTED] advised me that [REDACTED] had thrown the urine from the bucket over him.
- j) At 5.39pm on Friday 28 October 2022, I forwarded an email to the Centre Director at the Service advising of the withdrawal of my son from the Service. I produce that email. Attachment TS 2 – Email dated 28 October 2022
- k) I can advise that on regular occasions while picking up [REDACTED] other children including girls would run up and speak with me. Out of now where, [REDACTED] would come over and push one of the girls or punch them.
- l) I am aware that [REDACTED] and [REDACTED] are rough together. I have only ever had teachers speak to me once about [REDACTED] being rough with [REDACTED]. I have not been told he has been rough with any other children.

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fitness and Propriety as Nominated Supervisor

26. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:
 - a. be over 18 years of age;
 - b. have adequate knowledge and understanding of the provision of education and care to children; and
 - c. have the ability to effectively supervise and manage an education and care service.
27. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations.
28. At minimum, fitness and propriety includes honesty, knowledge, and ability.
29. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection of children from harm and hazards, and educational programs, with specific obligations contained in both the *Law* and the *Regulations*. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities). The nominated supervisor must also possess the ability to manage educators and any other staff, service premises, relationships with families and respond to children with medical and/or behavioural needs.
30. During the course of the investigation, there is no apparent evidence identifying that you had taken adequate steps to mitigate risk of a reoccurrence of the behaviour toward [REDACTED] being a reasonable precaution to take to ensure children are protected from harm and any hazard, likely to cause injury.
31. This evidence raises a concern about your ability to manage and supervise an education and care service.
32. 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.

Potential Compliance Action

33. 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.
34. Relevant legislation for enforceable undertakings and partial prohibition appears below.
35. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
36. 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 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

37. 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. 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.
38. At Attachment G 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

39. 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*.
40. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
41. 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.
42. 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>.
43. 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>

44. 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

5 May 2023