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Email: ████████████████████

Dear Ms ████████,

DECISION TO ISSUE PROHIBITION NOTICE

1. As a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, I am satisfied that there may be an unacceptable risk of harm to a child or children if you were allowed to be involved in the provision of education and care to children.
2. The Authority has conducted enquiries in response to allegations of inappropriate conduct by yourself towards your stepson (not an enrolled child) in the presence of enrolled children, whilst you were employed as a Nominated Supervisor 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. Web addresses to the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this Decision.

Facts

4. On 20 December 2021, the Authority received a notification from the Provider regarding inappropriate conduct by yourself towards your stepson (not an enrolled child) in the presence of enrolled children, including pulling your stepson's hair, smacking him several times, yelling at him, and isolating him in a kitchenette and bathroom located at the Service.
5. On 20 January 2022, the Authority issued you with a Show Cause Notice, including attachments, and advised that the Authority was considering whether you should be prohibited from being engaged in the provision or support of education and care to children.
6. Due to no response being received from you in respect to the Show Cause Notice, and the potential of risks associated with the alleged conduct, the Authority determined to formally investigate the allegations.
7. On 11 July 2022, to ensure that procedural fairness was afforded, the Authority issued a secondary Show Cause Notice (the Notice) to you via email and registered post. The Notice set out the allegations raised and relevant evidence, the grounds for issuing the Notice and

proposed actions should any of the allegations be substantiated. Refer Attachment A for a copy of the Notice.

8. As of the date of this Decision, the Authority has no record of any further submission from you in relation to the Notice.

Allegations

Allegation One

9. It is alleged that, on the afternoon of 5 October 2021, whilst educating and caring for children in the Preschool room of the Service, you smacked the bottom of a child in your personal care (██████) pulled his hair, yelled at him and isolated him in a kitchenette before removing him after several minutes, taking him to the bathroom, again yelling at him and smacking him several more times, which occurred in view of children enrolled at the Service.

Allegation Two

10. It is alleged on 26 October 2021, you, grabbed a child, ██████████, and returned them to their bed multiple times, for the purpose of resting, with the child apparently wanting to play, causing distress to the child.

Allegation Three

11. It is alleged that on 5 October 2021 and 26 October 2021, you, in capacity of Nominated Supervisor at the Service, have failed to ensure reasonable precautions were taken to protect children being educated and cared for from injury, being psychological injury, when you reacted as alleged to ████████ on 5 October 2021 in children's presence, and when you inappropriately interacted with ████████ by way of forcing sleeping, on 26 October 2021, in breach of section 167(2) of the *Law*.

Law

12. The evidence obtained during the Authority's enquiries into the matter, and as provided to you via the Notice, engages the following sections of the *Law*:

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

The Approved Provider 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

Section 182 of the *Law* – Grounds for issuing 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 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 the education and care service premises; or
 - (b) To provide education and care to children.
- (2) For the purpose 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
- (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.

Section 183 of the Law – Show cause notice to be given before prohibition notice

- (1) Before giving a person 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.
- (2) Subsection (1) does not apply if the Regulatory Authority is satisfied it is necessary, in the interests of the safety, health or wellbeing of a child or children, to immediately issue a prohibition notice to the person.

Reasons

- 13. Having considered the information received and further evidence gathered during subsequent enquiries, I am satisfied that there may be an unacceptable risk of harm to a child or children if you were allowed to provide education and care to children.

14. The described severity of discipline that you afforded your stepson as described in Allegation One, all in view of other children and educators on 5 October 2021, is very concerning to the Authority.
15. Your admission to the Provider in relation to Allegation Two, that you were frustrated so did use more force on an enrolled child to make them sleep on 26 October 2021 further supports the Authority being satisfied that there may be an unacceptable risk of harm to a child or children if you were allowed to provide education and care to children.
16. In relation to Allegation Three, the Authority is satisfied, on balance of probabilities, that as a Nominated Supervisor, by disciplining your stepson in front of enrolled children at the Service on 5 October 2021, and using force on another child on 26 October 2021 to make them sleep you did not ensure all reasonable precautions were taken to protect children from harm and hazards likely to cause injury or illness, in breach of section 167(2) of the *Law*.
17. In deciding if an action should be taken, I have considered all available evidence, your response to the Notice, your regulatory history and, the likelihood of risk to children.

Obligations upon Regulatory Authority

18. The starting point for the Authority is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely:

‘To ensure the safety, health and wellbeing of children attending education and care services; ...’
19. The relevant guiding principle at sections 3(3)(a) namely:
 - a.) that the rights and best interests of the child is paramount; . . .
20. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - c.) to monitor and enforce compliance with this law;
 - d.) to receive and investigate complaints arising under this law.
21. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
22. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
23. The *Law* is predominantly a protective law and the exercise of powers in this type of regulatory context is recognised by Courts as not being punitive. In the case of *New South*

Wales Bar Association v Evatt [1968] HCA 20 the High Court set out in clear terms that action to enforce professional standards is protective.

Decision

24. Considering the evidence and information available, and the objectives and guiding principles of the *Law*, the Authority has decided to issue you a Prohibition Notice, pursuant to sections 182(1) and (2) of the *Law*, to come into effect on the date of this Decision.
25. This notice prohibits you from providing education and care to children for an education and care service; being engaged as an educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service; or carrying out any activity relating to an education and care service. A copy of the Prohibition Notice is at Attachment B.
26. The Authority may consider a cancellation of the Prohibition Notice in the future based on an application that provides information as set out in Section 186 of the *Law* and *Regulation* 189.
27. Section 186 of the *Law* permits a person for whom the prohibition notice is in force to apply to the Regulatory Authority to cancel the notice.

Section 186 of the Law - Cancellation of prohibition notice

- (1) If the Regulatory Authority is satisfied there is not a sufficient reason for a prohibition notice to remain in force for a person, the regulatory Authority must cancel the prohibition notice and give the person notice of the cancellation.
- (2) A person may for whom a prohibition notice is in force may apply to the Regulatory Authority to cancel the notice.
- (3) The applicant must-
 - (a) be in writing; and
 - (b) include the prescribed information; and
 - (c) be signed by the person.
- (4) The person may state in the application anything the person considers relevant to the Regulatory Authority's decision about whether there would be an unacceptable risk of harm to children if the person were-
 - (a) To remain at the education and care service premises; or
 - (b) To provide education and care to the children.
- (5) The application may include a statement setting out any changes in the person's circumstances since the prohibition notice was given or since any previous application under this section that would warrant the cancellation of the notice.

Regulation 189 Application to cancel prohibition notice

For the purpose of section 186(3) (b) of the *Law*, the following information is prescribed-

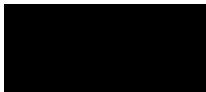
- (a) the applicant's name;

- (b) contact details for the applicant, including an address for service of the decision;
- (c) a statement setting out the grounds for the application to cancel the prohibition notice.

Review rights

- 28. In accordance with section 192 of the *Law* a decision to give prohibition notice is a reviewable decision for external review. A person who is the subject of a reviewable decision for an external review may apply to the relevant tribunal or court for a review of the decision. For the ACT this is the ACT Civil and Administrative Tribunal. Such application must be made within 30 days after the day on which you receive the prohibition notice.
- 29. The *Law* applies to you as a former educator. 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* may 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 Prohibition Notice please contact Janine Fairburn via email at janine.fairburn@act.gov.au.

Yours Sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care, Regulation and Support
ACT Education Directorate

12 August 2022