

Ms [REDACTED]  
National Operations Manager  
Abacus 49 Pty Ltd  
Email: [REDACTED]  
[REDACTED]

Dear Ms [REDACTED]

**Show Cause Notice – Fitness and Propriety**

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)*.
3. One of the Authority’s roles is ensuring persons in management or control (PMC’s), and nominated supervisors (NS’s) are fit and proper to be engaged at these levels within the early childhood education and care sector (ECEC).
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. The Authority is currently reassessing whether you remain fit and proper, relating to your role as a person with management or control, and more recently as a nominated supervisor, whilst engaged with Abacus 49 Pty Ltd PR-40015589 (the Provider).
6. The Authority has concerns regarding your ability to be involved in the provision of an education and care service. However, the Authority’s assessment 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.
7. Detailed guidance of how to respond appear at the end of this Notice.

**Grounds for issuing Show Cause Notice**

8. Evidence obtained during the assessment to date supports that you may not be a fit and proper person, considering matters outlined under section 13 of the *Law*.
9. If substantiated that you are not fit and proper, the Authority will no longer approve your involvement in any form of senior or management roles in ECEC operated in the ACT.

10. If, after considering all available evidence, the Authority finds you no longer fit and proper to be in a PMC or NS role, it will need to consider whether action is required at both a jurisdictional and national level. The Authority considers many factors when determining if an individual is fit and proper to be involved in the provision of ECEC, the focus being on ensuring future compliance and improved outcomes for children.

### **Facts**

11. The provider operates the following approved services in ACT:
- a) Genius Gowrie SE-00009751 – SE approval transfer date 20/04/2024
  - b) Genius Conder SE-00009802 – SE approval transfer date 4/03/2024
  - c) Genius Bonython SE-00009841 – SE approval transfer date 16/02/2024
  - d) Genius Gungahlin SE-40001554 – SE approval transfer date 20/04/2024 – currently suspended involuntarily.
12. Section 5 of the *Law* defines **person with management or control**, in relation to an education and care service, as:
- (a) if the provider or intended provider of the service is a body corporate, an officer of the body corporate within the meaning of the Corporations Act 2001 of the Commonwealth who is responsible for managing the delivery of the education and care service; or
  - (b) if the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service; or
  - (c) if the provider of the service is a partnership, each partner who has the responsibility, alone or with others, for managing the delivery of the education and care service; or
  - (d) in any other case, a person who has the responsibility, alone or with others, for managing the delivery of the education and care service.
13. You are identified as a PMC for the Provider under section 5(d) of the *Law* as you have held, and purported yourself, as being in the role of National Operations Manager for this Provider, operating approved services in the ACT.
14. In addition, you are identified as the current Nominated Supervisor for Genius Gowrie SE-00009751.

### **Allegations relating to fitness and propriety**

#### **Allegation One**

15. It is alleged that, due to mismanagement and poor governance of services operated in the ACT by the Provider, you as a PMC, and with significant control in the managing and delivering of the services, are not considered fit and proper in accordance with the expectations of section 13 of the *Law*.

#### **Allegation Two**

16. It is alleged that you, whilst in position of National Operations Manager for the Provider, and an identified person in management or control as defined under the *Law*, have not

demonstrated capacity to meet the compliance obligations in providing an education and care service in accordance with the expectations of section 13 of the *Law*.

#### Allegation Three

17. It is alleged that you, whilst in position of National Operations Manager for the Provider, and an identified person in management or control as defined under the *Law*, have not demonstrated the management capability to operate an education and care service in accordance with the expectations of section 13 of the *Law*.

#### Allegation Four

18. It is alleged, that you, whilst in position of National Operations Manager for the Provider, and an identified person in management or control as defined under the *Law*, misled the Authority by failing to disclose information regarding the viability of the services operated by the Provider in ACT, and the restructure of the Provider to be managed by other entities, in contravention of section 295 of the *Law*.

#### Legislation Relevant to Allegation

19. Refer Attachment A for provision of the *Law* relevant to the Allegation.

#### Evidence relevant to Allegation

20. Evidence relevant to the Allegation under consideration by the Authority included:
  - a. Compliance history of Genius Gungahlin.
  - b. Non-reporting of the closure of Genius Symonston.
  - c. Operation of services and staff.
  - d. Your engagement with the ACT Regulatory Authority.
21. In relation to the compliance history of Genius Gungahlin, the service was identified as declining quickly in compliance and quality whilst under the governance of the Provider. This resulted in a compliance notice being issued by the Authority in September 2024, a Significant Improvement Required (SIR) quality rating in December 2024, involuntary suspensions of the service approval in February 2025 and March 2025 (still currently suspended), and a show cause notice for service approval cancellation also being issued in March 2025.
22. On 17 September 2024, the Authority issued the Provider with a Compliance Notice, resultant from an audit being undertaken by authorised officers on 5 August 2024. The audit undertaken on 5 August 2024 identified multiple non-compliances posing risk to children. Refer copy of Compliance Decision and Notice at Attachment B.
23. The Provider responded to the Compliance Notice on 1 October 2024, and due to not meeting the requirements of the Compliance Notice was afforded an additional opportunity on 16 October 2024 to respond. The Provider submitted an additional response on 30 October 2024 and 15 November 2024 before the Authority were satisfied that all non-compliance matters had

been appropriately addressed. Refer response assessments by the Authority at Attachments C and D.

24. On 20 December 2024, the Authority issued the Provider a final Assessment and Rating Report of Significant Improvement Required (SIR), resultant from an assessment and rating visit by authorised officers undertaken at the Service between 4 and 6 November 2025. Refer copy of Assessment and Rating Report at Attachment E.
25. On 5 February 2025, the Authority issued the Provider with a Decision to Suspend the Service approval, resultant from the show cause process engaged on 6 December 2024. The suspension took effect 20 February 2025 until 5 March 2025 (inclusive) to afford the Provider adequate time to rectify non-compliances, and to put in place staff training, and plans for monitoring service and educator practices to ensure future compliance with the *Law*. Refer copy of Decision and Suspension Notice (minus attachments A through E due to size, but can be provided again upon request) at Attachment F.
26. On 27 February 2025, a meeting was had between Authority authorised officers and yourself, with advised of ACT Genius Operations Manager, Ms [REDACTED], to discuss the Genius Gungahlin suspension. This meeting was requested by you.
27. During this meeting, it was observed by authorised officers that you appeared confused with the purpose of the initial show cause process, the decision to suspend the service approval, and what the Authority expected to meet compliance. It was noted that you also requested advise as to what would happen if the service was found still not compliant at end of suspension timeframe.
28. You did not display an understanding of compliance under the *Law*, or quality expectations, and these had to be explained at length with you by authorised officers.
29. On 5 March 2025, the Authority issued the Provider with a further Decision to Suspend the Service approval, resultant from an audit at the Service undertaken by authorised officers on the same day.
30. Authorised officers during this visit identified ongoing multiple non-compliances posing an unacceptable risk to children, some of which had been identified during previous visits from the Authority and still not actioned.
31. The ongoing non-compliance demonstrates lack of engagement from the Provider to ensure the health, safety and wellbeing of children. You as the National Operations Manager, are a person who has the responsibility, alone or with others, for managing the delivery of the education and care service.
32. The suspension was determined to be effective immediately for a period of 60 days due to immediate risks posed to children by hazards as observed by authorised offices when attending the Service. Refer copy of Decision and Suspension Notice (minus attachments A through E due to size but can be provided again upon request) at Attachment G.

33. In relation to Genius Symonston, the Provider did not advise the Authority of the imminent closure of the service due to a Lease Termination Notice being issued by the landlord. The Authority only became aware of this matter due to correspondence received from educators and the landlord on 20 February 2025.
34. As the National Operations Manager, you did not disclose these matters to the Authority as a circumstance that would pose risk to the ongoing viability of the service operation and education and care of children enrolled at the service.
35. The Authority obtained information via social media on 22 February 2025, of a letter sent to families from Genius Management, advising that Genius Symonston would be closing effective 7 March 2025, citing challenges with staffing and operationally that impacted the providers enrolments and growth opportunities.
36. The Provider communicated directly with the Authority on 26 February 2025 with a submission of an application for voluntary suspension of Genius Symonston for 7 March 2025 to 07 September 2025. This submission also enclosed a copy of the letter to families which the Authority obtained via social media on 22 February 2025. Refer records referred to at Attachment H.
37. It is also noted that, in February 2025, the Authority obtained copies of letters that had been sent by you which advised families and staff that, as part of a strategic restructure, the ownership of Genius Conder and Bonython would transfer to Steps Learning Pty Ltd on or around 31 March 2025. Ownership of Genius Gungahlin would be transferred to Aspen Early Learning Pty Ltd and Aspen ELC had nominated Steps Learning Pty Ltd to be the manager of its operations.
38. This alleged restructuring and transfer of services was not notified directly to the Authority at any time by you. As a person with management or control, in the position of National Operations Manager, it would be expected that you would have advised the Authority of this prior to, or at the same time, that you advised families and staff. Refer copies of letters referred to at Attachment I.
39. Regarding information, via media and educator complaints, relational to the non-payment or late-payment of wages and superannuation to educators employed by the Provider, it is noted that you, as the National Operations Manager, did not disclose to the Authority of these issues arising.
40. These issues, although industrial related matters, are seen as circumstances that would pose risk to the ongoing viability of the service operation, and education and care of children enrolled at the service. It is noted that yourself and [REDACTED] were points of contacts for the staff when raising issues relating to their wages and operation of services, so were expected to be aware of the circumstances.
41. It was noted that on several occasions ACT operated services were required to close due to challenges with staffing arrangements resultant from allegedly staff refusing to work due to not being paid – a direct impact on the education and care of children, and quality of education and care being delivered at these services. Service closures due to staffing challenges are as follows:

- (a) Genius Symonston - closure for Monday 2/12/2024 due to unforeseen staffing challenges.
- (b) Genius Gungahlin closure for:
  - Monday, 23rd December, Tuesday, 24th December, and Friday, 27<sup>th</sup> December 2024 due to staff illness/virus.
  - Monday 10/02/2025, Tuesday 11/02/2025 and Wednesday 12/02/2025 due to unforeseen staffing challenges.
- (c) Genius Bonython - closure for Monday 24/02/2025 due to unforeseen staffing challenges.

**Potential Regulatory Actions**

- 42. The Authority reiterates that no decision has been made at this time – this letter is a step in the assessment process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential regulatory actions, if fitness and propriety is not substantiated and/or the Authority finds that you may be an unacceptable risk of harm to a child or children regarding your actions within a governance role.
- 43. Potential regulatory action available under Part 7 of the *Law*, and include:
  - a. Prohibition from education and care sector
- 44. Refer Attachment J for relevant legislation for prohibition.

**Effect of a Prohibition Notice**

- 45. 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.
- 46. A partial prohibition only applies to the role of nominated supervisor and not to the ability to remain an educator in the education and care sector. 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.
- 47. 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 the it to remain in force.

**Right of response**

- 48. 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.

49. 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.
50. 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

51. 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.
52. At Attachment K 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 [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au) or by post to:

Children's Education and Care Assurance  
Attention: Janine Fairburn, Authorised Officer  
GPO Box 158, Canberra ACT 2601.

#### Responding in an Interview

53. 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, if the person does not have any connection with the Provider or the Service.

#### **Caution**

54. 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**

55. The *Law* applies to you as an PMC and to any Provider you may be engaged with.
56. 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>.
57. 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>
58. Should you have any questions about this Show Cause Notice please contact Janine Fairburn by email at [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au).

Yours sincerely



Vittorio Colosimo  
A/g Assistant Director  
Education and Care Regulation and Support  
Education Directorate

2 April 2025