



Mr [REDACTED]
[REDACTED]
[REDACTED]

Email: [REDACTED] [REDACTED]

Dear Mr [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), have recently been notified of an allegation of inappropriate conduct by yourself in the presence of children, whilst you were employed as an educator at Snow Gum Early Childhood Learning Centre SE-00009835 (the Service), operated by D & J Lette Consulting Pty Ltd PR-00005825 (the Provider).
2. Web addresses for 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.
3. I am considering compliance action based on a suspected contravention of the Law indicated by evidence gathered during a formal investigation and on additional inappropriate conduct indicated by voluntary statements. The compliance action I am considering is a prohibition notice under Part 7, Division 3 of the Law, on the grounds of an unacceptable risk of harm.
4. It is noted that you are currently subject to an Enforceable Undertaking which was agreed to on 25 June 2020. Refer Attachment A for a copy of the Enforceable Undertaking.

Facts

5. On 13 November 2020, the Authority received a notification from the Provider regarding inappropriate conduct by yourself in the presence of children, including yelling, slamming doors, and throwing objects in anger.
6. The information gathered suggested conduct that, although inappropriate, was not disciplinary in nature and the Authority determined to make inquiries and seek evidence from witnesses on a voluntary basis.
7. During the course of obtaining voluntary statements, information was disclosed to the Authority that formed reasonable grounds for suspicion of an offence of inappropriate discipline under section 166 of the Law.

8. “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 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.
9. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to conduct a formal investigation.

Allegation of Inappropriate Discipline

10. It is alleged that, between 11:00 and 11:30am on Thursday 5 November 2020, whilst educating and caring for children at the Service, you restrained [REDACTED], a child being educated and cared for by the Service, by sitting on the floor with [REDACTED] back to your chest and both of your arms wrapped around his chest, whilst [REDACTED] was distressed and struggling to free himself, being discipline that was unreasonable in the circumstances and in contravention of section 166(3) of the Law.

Evidence Relevant to Allegation

11. During the course of the investigation, the Authority exercised powers under section 215 of the *Law* to obtain documents from the Provider, including working directly with children records and child attendance records.
12. Those records indicate that both you and [REDACTED] were present at the Service at the relevant time. Refer Attachment B for a copy of the records, redacted to remove personal information.
13. The Authority also exercised powers under section 215 of the *Law* to obtain statements from witnesses, relevant excerpts of which are inserted below.
14. Relevant excerpts from Witness A's compulsory statement are:

Contravention Supported by Allegation

16. The evidence obtained by the Authority supports a contravention of the following section of the *Law*:

Section 166(3) – Offence to Use Inappropriate Discipline

- (3) 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.

Allegation of Inappropriate Interactions

17. During initial inquiries made on a voluntary basis, the Authority obtained numerous statements which indicated inappropriate conduct by yourself in the presence of children, involving displays of uncontrolled anger, including yelling and physical aggression towards inanimate objects. Relevant excerpts from voluntary statements are included below.
18. Relevant excerpts from Witness C's voluntary statement are:

-
- | Category | Percentage |
|---|------------|
| U.S. should take action | 70% |
| U.S. should not take action | 70% |
| U.S. should take action but not at the expense of the economy | 70% |
| U.S. should not take action but not at the expense of the economy | 70% |

[REDACTED]

20. Relevant excerpts from Witness D's voluntary statement are:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

21. Although the evidence in paragraphs 17-19 above may not support an offence of inappropriate discipline, it indicates a concerning lack of emotional regulation in the presence of children. The behaviour alleged took place in the presence of children, causing them distress and posing a risk of harm to their safety, health and wellbeing. All interactions with children must meet the requirements of Regulation 155, which states:

Regulation 155 – Interactions with Children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that –

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and

- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Potential Compliance Action

22. The compliance action the Authority is considering is:

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 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 paragraph (a) to (g) in relation to the approved education and care service or in any other capacity.**

Section 185 of the Law – Content of Prohibition notice

- (1) A prohibition notice given to a person under section 182(1) must state that the person is prohibited from doing one or more of the following –
 - (a) Providing education and care to children for an education and care service;
 - (b) 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;
 - (c) Carrying out any other activity relating to an education and care service.

Effect of a Prohibition Notice

23. Should a decision be made to issue a Prohibition Notice pursuant to section 182 of the *Law*, you would be immediately prohibited from doing one or more of the activities specified in section 185(1) of the *Law*, which appear above.

Right of response

24. You have the right to respond to the information and the proposed action of prohibition on you set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
25. 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 Tanya Masterman at tanya.masterman@act.gov.au or by post to:

Tanya Masterman
Senior Investigator
Children's Education and Care Assurance
GPO Box 158
CANBERRA ACT 2601

Caution

26. Please be aware that if you are providing any information to the Authority, it is an offence under section 295 the *Law* to provide the Authority with false or misleading information or documents.

Legislation

27. The *Law* applies to you as a person engaged or formerly engaged within the early education and care sector.
28. 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>.
29. 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>
30. Should you have any questions about this Show Cause Notice please contact Tanya Masterman by telephone on (02) 6205 2012 or email to tanya.masterman@act.gov.au.

Yours sincerely,



Clare Brookes
Senior Director
Early Childhood Policy and Regulation
ACT Education Directorate

4 February 2021