

Ms [REDACTED]

RE: Baringa Early Learning Centre

Email: [REDACTED]

Dear Ms [REDACTED]

ACT Regulatory Authority – Decision to issue a Caution.

1. As you are aware, the ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance (CECA), recently investigated suspected offences which may have occurred at Baringa Early Learning Centre SE-00009748 (the Service) operated by Baringa Childcare Centre Incorporated PR-00005806 (the Provider).

Facts

2. On 22 August 2023, the Authority received a notification from the Provider alleging that you, as an educator at the Service, smacked a child [REDACTED] on 15 August 2023.
3. Due to the seriousness of the allegations and risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate.
4. Information and evidence obtained by the Authority during the investigation included Provider records and witness accounts, which the Authority obtained under section 215 of the *Education and Care Services National Law (ACT) (the Law)*.
5. On 1 November 2023, the Authority sent you a Show Cause Notice (the Notice) for the purpose of affording you with procedural fairness and ensuring natural justice to respond to the allegation raised. Refer copy of Notice at Attachment A (minus attachments – can be provided again on request).
6. The Notice outlined the grounds for issue, relevant evidence supporting the suspected contraventions of the *Law*, and potential compliance actions being considered if the allegations were substantiated.

Allegation of Inappropriate Discipline

It is alleged that on 15 August 2023, you, as engaged as an educator at the Service, subjected a child, believed to be, [REDACTED] (4:8), to a form of corporal punishment, in that, you smacked him three times on the bottom, in contravention of section 166(3) of the *Law*.

7. On 25 November 2023, the Authority received your response to the Notice with response time extended by agreement. Refer to response at Attachment B.

Law

8. The following provision of the *Law* was engaged by the allegation:

Section 166(3) of the Law - Offence to use inappropriate discipline.

A staff member, or volunteer at, supervisor of an education and care service must not subject any child being educated and cared for by a service to-

- (a) Any form of corporal punishment; or

- (b) Any discipline that is unreasonable under the circumstances.
Penalty: \$10 000, in the case of an individual

Obligations upon Regulatory Authority

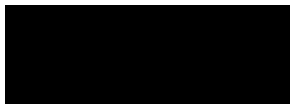
9. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely: "*to ensure the safety, health and wellbeing of children attending education and care services*".
10. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have specific application in this instance, being:
- (a) *that the rights and best interests of the child are paramount; ...*
 - (f) *that best practice is expected in the provision of education and care services.*
11. 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.*
12. The *Law* works to protect a particularly vulnerable group in 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*.
13. A key objective 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.
14. The *Law* is predominantly a protective *Law* and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

Reason and Decision

15. The Authority has considered all evidence gathered via the investigation process, inclusive of your response to the Notice and is satisfied, on the balance of probabilities, the allegation is proven as detailed, therefore substantiating contravention of section 166(3) of the *Law*.
16. Evidence of [REDACTED] disclosure of being smacked, which is independently corroborated by the witness further supports this finding.
17. The Authority acknowledges you have denied the allegation put to you, however, the Authority determined that actions undertaken by you on 15 August 2023, on balance of probabilities, were for the purpose of discipline, to change his behaviour that you were finding challenging, and that that this discipline was unreasonable under the circumstances. Smacking is identified as a form of corporal punishment.
18. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has considered:
- a. The conduct of smacking a child, and it's impact on the child on 15 August 2023;

- b. Your length of Service in the early educator and care sector;
 - c. Any previous history of substantiated offences against the *Law*;
 - d. The objectives and guiding principles of the *Law*.
19. In the circumstances, the Authority has decided not to take statutory compliance action, but to issue you with a Caution Letter.
20. This Caution Letter serves to remind you of your obligations, as an educator, to ensure that your actions in no way compromise the safety, health and wellbeing of children being educated and cared for by yourself.
21. The Authority also strongly encourages you to seek further training in how to manage children's behavioural issues in an appropriate manner. To assist you in this, and to ensure that you are aware of and understand how inappropriate discipline is viewed within an education and care setting, please find attached to this letter an ACECQA Fact Sheet on inappropriate discipline at [Attachment C](#).
22. In choosing to participate in the education and care sector, you have a responsibility, and obligation, to ensure that, always, your interactions with children meet the professional standards expected under the *Law* and *Regulations*, to support the health and well-being of all children being educated and cared for by you.
23. The Authority deems this matter now closed unless new relevant information is received to warrant additional enquiries to be made.
24. If you have any questions relating to the investigation findings, please contact Authorised Officer Brian Cropper via email at Brian.Cropper@act.gov.au.

Yours sincerely



Nicole Withers
Assistant Director (Acting)
Children's Education and Care Assurance
Education and Care, Regulation and Support

2 February 2024