

██████████
Nominated Supervisor (Previous),
RE: Busy Bees at Amaroo

By email to: ██████████

Dear ██████████

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 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)*. One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. Authorised Officers are currently investigating an allegation that on 22 January 2024, a child, ██████████ (3:2), was inappropriately disciplined by educator ██████████ while attending Busy Bees at Amaroo, SE-40007033 (the Service) operated by FEL Child Care Centres 4 Pty Ltd, PR-40004076 (the Provider).
3. Web addresses to 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.
4. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge). 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.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the alleged conduct may constitute inappropriate discipline, which is an offence under section 166(2), ensuring that no child being educated or cared for by the service is subjected to any form of discipline that is unnecessary in the circumstance.
7. If, after considering all available evidence, the Authority finds an offence has occurred, it will need to consider whether compliance action is required. 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 possible compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

8. The evidence obtained during the investigation to date supports offences under the *Law* within the following area:

- a. Ensuring that all children being educated and cared for by the service are not subjected to inappropriate discipline.

Background

9. On 2 September 2024, the Authority received information advising of an allegation, educator ██████ used inappropriate discipline, by way of yelling at a child, ██████ (3:2).
10. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate the matter.

Allegation of non-compliance

11. On Monday, 22 January 2024, educator ██████ subjected a child to a form of corporal punishment or discipline that was unreasonable in the circumstances in that the educator, ██████ said to child, ██████ which in English translates to “you will be beaten up by shoes you dog”, in contravention of **Section 166(1)** of the National Law.

Legislation Relevant to Allegation

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

Section 166(2) of the Law – Offence to use inappropriate discipline.

A nominated supervisor of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Penalty: \$11 400

Evidence relevant to Allegations

13. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Records produced by the Provider supported the following:
 - a. The Service was operating on 22 January 2024.
 - b. Working directly with children records show that educator ██████ was working directly with ██████ on 22 January 2024. Refer Attachment A.

Records of conversation with staff members in relation to the incident. Refer Attachment B.

14. During the investigation, the Authority obtained witness statements, relevant excerpts from which appear below, with personal information redacted where appropriate. Please note that

some witness statements were obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.

15. Relevant excerpts from Witness A's statement are:



Contravention Supported by Evidence

16. Authority records identify you were the Nominated Supervisor at the Service on 22 January 2024. Refer Attachment C.
17. Evidence provided to the Authority and subsequent regulatory investigation appears to support contraventions of section 166(2) of the *Law*.
18. Ensuring that no child is subjected to inappropriate discipline, is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury.

Fitness and Propriety as Nominated Supervisor

19. *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.
20. 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. At minimum, fitness and propriety includes honesty, knowledge, and ability.

21. 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*.
22. 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).
23. 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.
24. During the investigation, there is no apparent evidence identifying that you ensured [REDACTED] [REDACTED] was not inappropriately disciplined on 22 January 2024, being a reasonable precaution to take.
25. This evidence raises a concern about your ability to manage and supervise an education and care service.
26. 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 Actions

27. 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. Potential compliance actions 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.

Effect of an Enforceable Undertaking

28. An Enforceable Undertaking is a formal “promise” to the Authority to do or not do certain things. Terms vary, but examples of requirements are:
 - a. only working with children under supervision;
 - b. doing some additional training to improve your skills as an educator;
 - c. keeping the Authority advised of your workplace; or
 - d. having an approved mentor.
29. It is a flexible way to ensure ongoing compliance with the *Law* and *Regulations* and may be appropriate depending on the level of risk to children.

30. If you offer an enforceable undertaking and the Authority accepts it, failure to comply with any of its terms after acceptance allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *Law* to enforce the undertaking.

Section 179A of the Law – Enforceable undertaking

- (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.
- 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.
- (3) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (4) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (5) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Effect of a Prohibition Notice

31. 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) 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 182 of the Law – Grounds for giving prohibition notice

- (2) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved 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 and care service premises; or
 - (b) to provide education and care to children.
- (3) 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 paragraphs (a) to (g) in relation to the approved education and care service –
or in any other capacity

Section 183 – Show cause notice to be given before prohibition notice

- (1) Before giving 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.

Right of response

32. 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.

Responding in Writing

33. 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.
34. 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.

Responding in an Interview

35. 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, as long as the person does not have any connection with the Provider or the Service.
36. If you respond in writing, please direct your written submission via email to Authorised Officer, Jarrod REID at Jarrod.Reid@act.gov.au or by post to:

Jarrold REID
Children's Education and Care Assurance (CECA)
Education Directorate
GPO Box 158, CANBERRA ACT 2601

Caution

37. 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.
38. Please be aware that all evidence gathered via the investigation and disclosed in this Notice to ensure you receive procedural fairness, is protected information under the *National Law*.

Legislation

39. The *Law* applies to you as an educator and to any service you may be employed at.
40. 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>.
41. 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>
42. Should you have any questions about this Show Cause Notice please contact Jarrod REID by email at Jarrod.Reid@act.gov.au.

Yours sincerely,



Vittorio Colosimo
A/g Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support

09 January 2025.