



Mr [REDACTED]  
Person with Management or Control  
Gungahlin Montessori Academy Pty Ltd  
RE: Gungahlin Montessori Academy

Email: [REDACTED]

Dear Mr [REDACTED]

**Show Cause Notice – Proposed Compliance Action**

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA).
2. As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law* (the *Law*). One of the Authority's roles is to investigate suspected offences under the *Law*.
3. The Authority is currently investigating multiple suspected offences at Gungahlin Montessori Academy - SE-40020141 (the Service) operated by Gungahlin Montessori Academy Pty Ltd - PR-40017814 (the Provider). 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.
4. Authorised Officers have obtained evidence from other sources and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the Authority's investigation is not complete until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
5. If substantiated, the allegations may constitute offences under sections 166 and 167 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
6. Where offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and

improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

### **Grounds for issuing Show Cause Notice**

7. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
  - a. Inappropriate discipline and Protection from harms and hazards.

### **Facts**

8. On 11 October 2023, the ACT Regulatory Authority (the Authority) received a notification alleging an educator had struck a child on the back. Refer Attachment A.
9. On 13 October 2023, further information was furnished by Provider upon request including the following relevant documents:
  - a) Witness version [REDACTED]
  - b) Witness version [REDACTED]
  - c) Dismissal for Misconduct Letter.
  - d) Behaviour Management Plan

Refer to Attachment B for relevant documents.

10. Due to the risk of harms and hazards likely to cause injury if children are inappropriately disciplined, the Authority determined to investigate the matter, which engaged suspected offences under sections 166 and 167 of the *Law*.

### **First set of grounds – Inappropriate discipline and protection from harm.**

#### **Allegation One**

It is alleged that on 11 October 2023, the Provider failed to ensure that no child being educated and cared for by the Service, was subjected to any form of corporal punishment, in that, a child believed to be [REDACTED] (3:7) was slapped on the back by an educator, contravening section 166(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

#### **Allegation Two**

It is alleged that by 11 October 2023, the Provider failed to ensure that reasonable precaution was taken to protect children from and any form of hazard likely to cause

injury, in that there were insufficient supports for educators and child, believed to be [REDACTED] (3:7) with challenging behaviours and complex needs, contravening section 167(1) of the *Law*.

Legislation Relevant to the Allegation One and Two

11. The following provisions of the *Law* are relevant to the Allegation:

**Section 166(1) of the Law - Offence to use inappropriate discipline**

The Approved Provider of an education and care service must ensure that no child being educated and cared for by a service is subjected 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  
\$50 000, in any other case.

**Section 167(1) 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  
\$50 000, in any other case.

Evidence relevant to Allegation One

12. On 1 November 2023, the Provider furnished documents pursuant to 215 Notice including the following relevant documents:

- a) Child Attendance
- b) Working Directly with Children records
- c) Enrolment records
- d) Policy and procedures
- e) Personnel file [REDACTED]
- f) Incident Reports
- g) Internal Investigation

Refer Attachment C.

13. Documents furnished by Provider to the Authority upon request include signed contemporaneous confession from accused educator Ms [REDACTED], to slapping child, [REDACTED] on the back, resulting from a refusal to put his clothes and scratching the hand of Ms [REDACTED]. This version of events is supported by the evidence of, educator Ms [REDACTED] who also completed a signed file note regarding the incident. Refer to Attachment B for file notes.
14. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence.
15. Please note that educator witness statements were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.
16. Relevant extracts from Witness A's statement include:



Contraventions supported by evidence.

17. Evidence gathered appears to support that [REDACTED] was subjected to corporal punishment, in that he was smacked on the back by Ms [REDACTED] contravening section 166(1) of the *Law*, and giving rise to a contravention of 167(1) of the *Law*.
18. Ensuring that no child is subjected to corporal punishment, or discipline unreasonable in the circumstances, is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury.

**Second set of Grounds – Protection from harms and Hazards**

Allegation Two

19. It is alleged that by 11 October 2023, the Provider failed to ensure that reasonable precaution was taken to protect children from and any form of hazard likely to cause injury, in that there were insufficient supports for educators and a child, believed to be [REDACTED] (3:7) with challenging behaviours and complex needs, contravening section 167(1) of the *Law*.


Evidence relevant to the allegation

20. Documents furnished by the Provider, indicate [REDACTED] being enrolled in July 2023. Several incident reports outline [REDACTED] behaviour toward other children, with a therapist's email dated 21/09/2023, outlining strategies to assist [REDACTED]
21. Furthermore, the Authority note unsigned or dated escalation plan and behaviour notebook for [REDACTED] however, a further plan is evident until the day after incident being 12 October 2023. Refer to therapist email, incident reports and notebook extracts at Attachment C.
22. Excerpts from Witness A include the following excerpts:









Contraventions supported by evidence.

23. Evidence gathered appears to support contravention of section 167(1) of the *Law*.

**Potential Compliance Action**

24. 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 an offence is substantiated. Potential compliance actions include:

- a. Non-statutory Administration Action (similar to a caution) with no further action;
- b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
- c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
- d. Imposing of Conditions on the Service's approval under section 51 of the *Law*.
- e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
- f. Cancellation of the service approval under section 79 of the *Law*.

25. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.

26. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

**Right of response**

27. As mentioned previously, this is the Provider's opportunity to respond to the allegations and evidence set out in this Notice. 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.

28. 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 [Brian.Cropper@act.gov.au](mailto:Brian.Cropper@act.gov.au) or by post to:

Children's Education and Care Assurance (CECA)  
Education Directorate  
Attention: Brian Cropper  
GPO Box 158, Canberra ACT 2601.

**Caution**

29. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
30. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
31. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
32. The *Law* applies to you as a provider and any service you operate. 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>.
33. 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>
34. Should you have any questions about this Show Cause Notice please contact Brian Cropper on [Brian.Cropper@act.gov.au](mailto:Brian.Cropper@act.gov.au).

Yours Sincerely



Nicole Withers  
A/g Assistant Director  
Children's Education and Care Assurance  
Education and Care, Regulation and Support

15 February 2024