



[REDACTED]

gement or Control

BMA Belconnen Pty Ltd ATF BMA Belconnen Unit Trust

RE: Bright Minds Academy Belconnen

Email:

[REDACTED]

Dear [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 Bright Minds Academy Belconnen– SE-40012576 (the Service) operated by BMA Belconnen Pty Ltd ATF BMA Belconnen Unit Trust – PR-40013290 (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 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

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

Facts

9. On 2 April 2024, the ACT Regulatory Authority (the Authority) received a notification of complaint alleging that an educator hit a child after the child had kicked the educator. Refer Attachment A.
10. On 5 April 2024, further information was furnished by Provider including the following relevant documents:
- a) Incident Report [REDACTED] 2.4.24
 - b) [REDACTED] Statement
 - c) [REDACTED] Statement of Events
 - d) Meeting with [REDACTED] 3.4.24
 - e) Stand Down Letter – [REDACTED] 2.4.24
 - f) Video.mov (Can be viewed upon request)

Refer Attachment B.

11. Due to the risk of harms and hazards likely to cause injury if children are subject to inappropriate interactions amounting to discipline, the Authority determined to investigate, engaging suspected offences under sections 166(1) and 167(1) of the *Law*.

Grounds for notice

Allegation

12. About 10:06am on 2 April 2024, the Approved Provider failed to ensure that no child being educated and cared for by the service is subjected to any form of corporal punishment or discipline that is unreasonable in the circumstances in that where educator [REDACTED] hit child [REDACTED] (4:4) with her left hand, and then proceeded to walk the child across the room by pulling his left arm with her right hand, in contravention of **Section 166(1)** of the National Law.
7. About 10:06am on 2 April 2024, the Approved Provider failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury where educator [REDACTED] [REDACTED] hit child [REDACTED] [REDACTED] (4:4) with her left hand, and then proceeded to walk the child across the room by pulling his left arm with her right hand, in contravention of **Section 167(1)** of the National Law.

Legislation Relevant to the Allegation

8. 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: \$11 400, in the case of an individual

\$57 400, 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: \$11 400, in the case of an individual

\$57 400, in any other case.

Regulation 155 provides that 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.

Evidence relevant to the Allegation

9. On 2 July 2024, the Provider furnished documents pursuant to 215 Notice including the following relevant documents:
- a) Child Attendance
 - b) Working Directly with Children records
 - c) Policy and procedures

- d) Meeting with parents 2.4.24
- e) [REDACTED] behaviour support plan
- f) Incident Report [REDACTED] 2.4.24
- g) Record of Conversation [REDACTED] – [REDACTED]

Refer Attachment C.

10. Documentation furnished by Provider identify the following:

- a) Ms [REDACTED] was an educator at the Service on 2 April 2024.
- b) A signed Record of Conversation completed by [REDACTED] on 3 April 2024, records a conversation between [REDACTED] and [REDACTED] where [REDACTED] makes admissions to accidentally hitting the child during the altercation with another child. Refer Attachment B - Meeting with [REDACTED] 3.4.24.
- c) Relevant excerpts from the Record of Conversation are as follows.



- d) A signed Record of Conversation completed by [REDACTED] on 9 April 2024, records a conversation between [REDACTED] and [REDACTED] where [REDACTED] makes admissions to accidentally touching the child during the altercation with another child. Refer Attachment C - Record of Conversation [REDACTED] – [REDACTED].
- e) Relevant excerpts from the Record of Conversation are as follows.



[REDACTED]

f) A video file of CCTV camera fitted within the Service captures the incident. Screenshots of the CCTV show that [REDACTED] had been kicked in the chest by the child and also show [REDACTED] reaction to being kicked by moving her left hand towards the child in a hitting motion. Attachment D.

g) The CCTV footage can be view upon request.

Contraventions supported by evidence.

11. Evidence gathered appears to support that [REDACTED] [REDACTED] was subjected to corporal punishment, in that he was hit by [REDACTED] contravening section 166(2) of the *Law*, and giving rise to a contravention of 167(2) of the *Law*.
12. 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.

Potential Compliance Action

13. 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*.

14. 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.

15. 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

16. 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.
17. At Attachment E 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 Jarrod.Reid@act.gov.au or by post to:

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

Caution

18. 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.
19. 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>.
20. 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>
21. Should you have any questions about this Show Cause Notice please contact Jarrod REID on Jarrod.Reid@act.gov.au.

Yours Sincerely



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

Education and Care, Regulation and Support

13 August 2024