

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

#### **DECISION TO ISSUE PROHIBITION NOTICE WITHOUT SHOW CAUSE**

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, under the *Education and Care Services National Law Act (ACT)* (the *Law*). The Authority is responsible for regulation of education and care services in the ACT.
2. I am satisfied that there may be an unacceptable risk of harm to a child or children if you were allowed to provide education and care to children.
3. The Authority has conducted enquiries in response to information received in relation to alleged inappropriate conduct towards a child when engaged as an educator at St Nicholas Greek-Australian Preschool and Childcare Centre (the Service).
4. Web addresses for the *Law* and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this Decision.

#### **Facts**

5. On 9 November 2023, the Authority received information via Reportable Conduct information sharing pathways. The information advised that you had, allegedly, inappropriately touched a child, by putting your hands down the child's pants and touching him on the penis.
6. Additional documentation was obtained from the Provider and a decision was made to investigate suspected offences. During investigation, documentation has been obtained, including:
  - a. Notification from the Service.
  - b. Personnel records relating to your employment at the Service;
  - c. Records relating to previous similar allegations raised against you whilst employed at the Service in 2017 and 2018.

Refer relevant records at Attachment A.

7. It was noted that, following a paid stand down and meetings with the Provider of the Service, your employment was terminated.

#### **Law**

8. The evidence obtained during the investigation engages the following sections of the *Law*:

#### **Section 182 – 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 purpose 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 of the Law – Show cause notice to be given before prohibition notice**

- (1) Before giving a person 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.
  - (2) Subsection (1) does not apply if the Regulatory Authority is satisfied it is necessary, in the interests of the safety, health or wellbeing of a child or children, to immediately issue a prohibition notice to the person.
9. Also, relevant to making this decision are the following objectives and guiding principles of the *Law*:

### **Section 3 of the *Law*- Objectives and guiding principles**

- (1) The objective of this Law is to establish a national education and care services quality framework for the delivery of education and care services to children.
- (2) The objective of the national education and care service quality framework are as follows-
  - (a) To ensure the safety, health and wellbeing of children attending education and care services.
- (3) The guiding principles of the national education and care services quality framework are as follows-
  - (a) That the rights and best interests of the children are paramount.

### **Reasons**

10. Having considered the information received and further information gathered during subsequent enquiries, the Authority is satisfied that there may be an unacceptable risk of harm to a child or children if you were allowed to provide education and care to children.
11. In deciding if an action should be taken, I have considered all available evidence, and the likelihood of risk to children.

### **Obligations upon Regulatory Authority**

12. The starting point for the Authority is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles of the Law. 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; ...’
13. The relevant guiding principle at sections 3(3)(a) namely:
  - a.) that the rights and best interests of the child is paramount; . . .
14. 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.
15. The *Law* works to protect a particularly vulnerable part of 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*.

16. A key object 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.
17. The *Law* is predominantly a protective law and the exercise of powers in this type of regulatory context is recognised by Courts as not being punitive. In the case of *New South Wales Bar Association v Evatt* [1968] HCA 20 the High Court set out in clear terms that action to enforce professional standards is protective.

### **Decision**

18. Considering the evidence and information available, and the objectives and guiding principles of the *Law*, the Authority has decided to issue you a Prohibition Notice, pursuant to section 182 of the *Law*, to come into effect on the date of this decision.
19. This notice prohibits you from providing education and care to children for an education and care service; 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; or carrying out any activity relating to an education and care service.

A copy of the Prohibition Notice is at Attachment B.

20. The Authority is further satisfied that it is necessary, in the interests of the safety, health or wellbeing of a child or children, to issue you immediately with a prohibition notice without the issue of a show cause notice.
21. The Authority may consider a cancellation of the Prohibition Notice in the future based on an application that provides information as set out in Section 186 of the *Law* and *Regulation* 189.
22. Section 186 of the *Law* permits a person for whom the prohibition notice is in force to apply to the Regulatory Authority to cancel the notice.

### **Section 186- Cancellation of prohibition notice**

- (2) A person may for whom a prohibition notice is in force may apply to the Regulatory Authority to cancel the notice.
- (3) The applicant must-
- (a) be in writing; and
  - (b) include the prescribed information; and
  - (c) be signed by the person.
- (4) The person may state in the application anything the person considers relevant to the Regulatory Authority's decision about whether there would be an unacceptable risk of harm to children if the person were-

- (a) To remain at the education and care service premises; or
  - (b) To provide education and care to the children.
- (5) The application may include a statement setting out any changes in the person's circumstances since the prohibition notice was given or since any previous application under this section that would warrant the cancellation of the notice.

Regulation 189 Application to cancel prohibition notice

For the purpose of section 186(3) (b) of the *Law*, the following information is prescribed-

- (a) the applicant's name;
- (b) contact details for the applicant, including an address for service of the decision;
- (c) a statement setting out the grounds for the application to cancel the prohibition notice.

Review rights

23. In accordance with section 192 of the *Law* a decision to give prohibition notice is a reviewable decision for external review. A person who is the subject of a reviewable decision for an external review may apply to the relevant tribunal or court for a review of the decision. For the ACT this is the ACT Civil and Administrative Tribunal. Such application must be made within 30 days after the day on which you receive the prohibition notice.
24. The *Law* applies to you as an educator. 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>. The *Law* and *Regulations* may be viewed at: <http://www.acecqa.gov.au/national-law>, and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

Should you have any questions about this Prohibition Notice please contact me via email at [jo.williams@act.gov.au](mailto:jo.williams@act.gov.au).

Yours Sincerely



Jo Williams  
Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support

25 September 2024