



Mr [REDACTED]  
Company Director  
Abacus 49 Pty Ltd

Email: [REDACTED]

Dear Mr [REDACTED]

**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.
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 (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations). One of the Authority’s roles is to monitor compliance with the Law and the Regulations.
3. 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.

**Facts**

4. On 5 August 2024, the Authority conducted a compliance audit at Genius Gungahlin SE-40001554 (the Service) operated by Abacus 49 Pty Ltd PR--40015589 (the Provider).
5. On 17 September 2024, the Authority issued a Compliance Notice to the Provider for not complying with the provisions of the Law and the Regulations. The decision was made based on the evidence the authorised officers gathered during the compliance audit. The Compliance Notice detailed contraventions of sections 167 (1), 172 and 174 (1) of the Law as well as a breach of several regulations including 75, 103 (1), 105, 106 (2) and 155. The previous compliance notice is in **Attachment A**.
6. The Provider submitted a response to the compliance notice on 1 October 2024. The response was assessed and determined as not yet satisfying the requirements of the Compliance Notice. The Provider was given a second chance to respond to the notice on 16 October 2024.
7. The Provider submitted a second response on 30 October 2024. The Authority assessed that not all matters had been addressed in the response and the Authority sent an email to the Provider on 6 November 2024. The final submission of evidence to satisfy the requirements of the compliance notice were submitted by the Provider by email on 15 November.
8. On 4 to 6 November 2024, the Authority conducted a visit at the Service as part of the service’s assessment and rating process.

9. Evidence was collected at the time of the visits and a contravention of section 167 of the Law was identified. Breaches of regulations 77 (1), 97 (4), 103 (1) and 106 (2) were also identified. Details of the non-compliance can be found in the assessment and rating report. This report is in **Attachment B**.
10. On 8 November 2024, the Authority conducted a teams meeting with the National Manager [REDACTED] and NSW/ACT Manager [REDACTED] to discuss some non-compliances identified at assessment and rating specifically Regulation 97 (4) and related matters to emergency procedures. A follow up email was sent on the same day requesting evidence that all emergency evacuation routes had been cleared, evacuation procedures were displayed, and that the laundry remained inaccessible to children.
11. On Monday 11 November 2024, the Authority received a response from the ACT/ NSW Manager [REDACTED] with evidence to support that these high-risk non-compliances identified had been rectified.
12. On 26 November 2024, the Authority conducted a risk audit at the Service. Authorised officers gathered evidence and identified a contravention of section 167 of the Law. Breaches of regulations 75 (a), 76, 77 (1), 79 (1) (b) (ii), 103 (1), 105 and 155 were identified. The table of the non-compliance identified at the time of the risk audit is in **Attachment C**.
13. The Authority is satisfied that findings of the audit and assessment and rating support a case to answer for the Provider regarding suspected offences under the Law and breaches to the Regulations.
14. However, the Authority's decision process regarding potential compliance actions to be taken is not complete until you have had an opportunity to respond to the allegations and evidence provided to the Authority. This is the reason for sending this Show Cause Notice (the Notice) to you, as a person with management or control of the Provider.
15. Detailed instructions of how to respond appear at the end of this Notice.
16. If substantiated, the allegations may constitute an offence under section 167 (1) of the Law and breaches to the regulations mentioned in this notice. If, after considering all available evidence, the Authority finds any offence is substantiated, it will need to consider whether compliance action is required.
17. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children. Potential compliance actions include the following (further details appear at the end of this Notice):
  - a) Non-statutory Administrative Action (similar to a caution) with no further action or with measures to be taken and evidence produced;
  - b) Issue of a Compliance Notice;
  - c) Conditions imposed on Service Approval;
  - d) Suspension of Service Approval; and
  - e) Cancellation of Service Approval.

**Grounds for issuing Show Cause Notice**

18. The evidence obtained during the risk audit process and the assessment and rating process to date supports an offence under the *Law* as follows:
- a) Failure to protect children from harms and hazards likely to cause injury.
19. The evidence obtained during the assessment and rating process to date supports a breach of the regulations as follows:
- a) Health, hygiene and safe food practices were not respected;
  - b) Emergency and evacuation floor plan and instructions were not consistently displayed;
  - c) Premises, furniture and equipment were not safe, clean and in good repair;
  - d) Laundry facility was accessible to children.
20. The evidence obtained during the risk audit process to date supports a breach of the regulations as follows:
- a) Information about educational program was not kept available;
  - b) Information about educational program was not given to parents;
  - c) Health, hygiene and safe food practices were not respected;
  - d) The service's provision of food was not chosen having regard to the dietary requirements of individual children;
  - e) Premises, furniture and equipment were not safe, clean and in good repair;
  - f) Furniture, materials and equipment was insufficient;
  - g) Interactions with children were poor.

**Allegation relating to Law and Regulations – Assessment and Rating**

21. The evidence obtained during the assessment and rating process raise the following allegations of offence under the *Law* and breaches of the *Regulations* –

**Allegation One**

It is alleged that during the assessment and rating visits undertaken at the Service on 4 to 6 November 2024, children were left in wet nappies and clothes for lengthy periods of time before being changed. Educators did not change gloves adequately during nappy change process. This is a contravention of s167 (1) of the *Law* and breach of *Regulation 77 (1)*.

### **Allegation Two**

It is alleged that during the assessment and rating visits undertaken at the Service on 4 to 6 November 2024, educators were unable to guide children's behaviour leading to children being in unsafe situations, in contravention of s167 (1) of the *Law*. The children were able to leave their play space to access storage areas, dining room, outdoor environments unsupervised. The children were observed by the authorised officer climbing and jumping on furniture, hitting and kicking peers. The educators were lifting children up by the hands to move them around in order to manage a situation.

### **Allegation Three**

It is alleged that during the assessment and rating visits undertaken at the Service on 4 to 6 November 2024, access to the fire hose in the foyer was blocked by an armchair and egress pathway was restricted in the hallway between the kitchen and the toddler classroom, in contravention of S167 (1) of the *Law*.

### **Allegation Four**

It is alleged that during the assessment and rating visits undertaken at the Service on 4 to 6 November 2024, the evacuation floor plan was not displayed near each exit in the toddlers' room, breaching *Regulation 97*.

### **Allegation Five**

It is alleged that during the assessment and rating visits undertaken at the Service on 4 to 6 November 2024, the indoor and outdoor environments were not clean and kept in good repair. There were weeds around the playground, low sand and tanbark levels, debris left across the space, paint chipping on walls, dirty walls, dirty floors and mouthed toys not being cleaned daily. A contravention of *Regulation 103 (1)*.

### **Allegation Six**

It is alleged that during the assessment and rating visits undertaken at the Service on 4 to 6 November 2024, the laundry was observed being left opened twice. On one of the doors, tape had been placed over the mechanism that goes into door frame, providing opportunity for children to freely access this space. A contravention of *Regulation 106 (2)*.

### **Allegations relating to Law and Regulations – Risk Audit**

22. The evidence obtained during the risk audit process raise the following allegations of offence under the *Law* and breaches of the *Regulations* –

### **Allegation Seven**

It is alleged that during the risk audit undertaken at the Service on 26 November 2024, there was no paper towel available across the service. The service had run out of blue gloves which are used for food handling as stipulated in the service's food policy. There was no system in place to ensure that food out of their original containers are dated and stored correctly to avoid being contaminated or expired. Educators were wearing the same gloves to handle food

whilst also attending to other tasks. This is a contravention of s167 (1) of the *Law* and breach of *Regulations 77 (1)* and *170 (1)*.

When authorised officers questioned staff about supplies they were informed that supplies have not been delivered as suppliers refuse to work with the Provider as they have not been paid.

#### **Allegation Eight**

It is alleged that during the risk audit undertaken at the Service on 26 November 2024, checklists to ensure that the environments are safe, well equipped and in good repair were not conducted consistently. The small garden area outside the junior preschool room was not well maintained with rubbish, some broken ceramics and debris throughout. A toilet shared by junior preschool and preschool was blocked and had a plastic bag over the top of it. A lint filter on a clothes dryer had not been cleaned posing a risk of fire. This is a contravention of s167 (1) of the *Law* and breach of *Regulations 103 (1)* and *170 (1)*.

Staff members stated that it had been difficult to get maintenance out lately as the companies refuse to work with the Provider as they have not been paid.

#### **Allegation Nine**

It is alleged that during the risk audit undertaken at the Service on 26 November 2024, the educational programs displayed were not current. When authorised officers asked about this, staff members advised that this was because they were unable to print the program, as the Provider has not paid for the rental on the printer or supplied toner. This is a breach of *Regulations 75 (a)* and *76*.

#### **Allegations Ten**

It is alleged that during the risk audit undertaken at the Service on 26 November 2024, the service was unable to provide halal meat for children who require it. The children were instead provided with a vegetarian meal. When asked about this by authorised officers, staff members advised that the supplier had not delivered the order due to the Provider not paying the supplier's invoices. This is a breach of *Regulation 79 (1) (b) (ii)*.

#### **Allegation Eleven**

It is alleged that during the risk audit undertaken at the Service on 26 November 2024, resources in the rooms occupied by the children and in the outdoor environment were sparse and some resources in poor condition. Staff members stated that they have not had access to art and craft supplies. Authorised officers were informed that the suppliers do not want to engage with the service as they were not getting paid for the orders placed previously. This is a breach of *Regulation 105*.

## **Allegation Twelve**

It is alleged that during the risk audit undertaken at the Service on 26 November 2024, educators in the toddler and preschool rooms were disengaged and not interacting with children. Instead, educators were task oriented, commanding children and shouting at them. Transitions did not run smoothly, and there was no support for children during transitions. Staff used raised voices with children and commended them to wash their hands. This is a breach of *Regulation 155*.

### **Legislation Relevant to Allegations**

23. The following provisions of the *Law* and *Regulations* are relevant to the allegations:

#### **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 75 Information about educational program to be kept available**

The approved provider of an education and care service must ensure that—

- (a) information about the contents and operation of the educational program for the service is displayed at the education and care service premises at a place accessible to parents of children being educated and cared for by the service.

Note— A compliance direction may be issued for failure to comply with this regulation.

#### **Regulation 76 Information about educational program to be given to parents**

The approved provider of an education and care service must ensure that a parent of a child being educated and cared for by the service is provided with the following information on request—

- (a) information about the content and operation of the educational program so far as it relates to that child;
- (b) information about the child's participation in the program;
- (c) a copy of the documents kept under regulation 74 in respect of the child.

Note— A compliance direction may be issued for failure to comply with this regulation.

#### **Regulation 77 Health, hygiene and safe food practices**

(1) The approved provider of an education and care service must ensure that nominated supervisors and staff members of, and volunteers at, the service implement—

- (a) adequate health and hygiene practices; and
- (b) safe practices for handling, preparing and storing food— to minimise risks to children being educated and cared for by the service.

Penalty: \$2200.

**Regulation 79 Service providing food and beverages**

(1) The approved provider of an education and care service that provides food or a beverage to children being educated and cared for by the service must ensure that—

(b) the food or beverage provided is chosen having regard to the dietary requirements of individual children taking into account—

(ii) any specific cultural, religious or health requirements.

Penalty: \$2200

**Regulation 97 Emergency and evacuation procedures**

(4) The approved provider of an education and care service must ensure that a copy of the emergency and evacuation floor plan and instructions are displayed in a prominent position near each exit at the education and care service premises, including a family day care residence and approved family day care venue.

Penalty: \$2200.

Note— A compliance direction may be issued for failure to comply with subregulation (2), (2A), (3) or (4).

**Regulation 103 – Premises, furniture and equipment to be safe, clean and in good repair**

(1) The approved provider of an education and care service must ensure that the education and care service premises and all equipment and furniture used in providing the education and care service are safe, clean and in good repair.

Penalty: \$2200.

**Regulation 105 Furniture, materials and equipment**

The approved provider of an education and care service must ensure that each child being educated and cared for by the education and care service has access to sufficient furniture, materials and developmentally appropriate equipment suitable for the education and care of that child.

Note— A compliance direction may be issued for failure to comply with this regulation.

**Regulation 106 Laundry and hygiene facilities**

(2) The approved provider of the service must ensure that laundry and hygienic facilities are located and maintained in a way that does not pose a risk to children.

Note— A compliance direction may be issued for failure to comply with subregulation (1) or (2).

**Regulation 155 Interactions with children**

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.

**Regulation 170 Policies and procedures to be followed**

- (1) The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Penalty: \$1100.

**Potential Compliance Action**

- 24. The Authority reiterates that no decision has been made at this time – this notice is a step in the assessment of compliance process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions if the 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 pursuant to sections 70, 71 and 72 of the *Law*. Any proposed suspension would be in effect 14 days from the time the Provider has been notified of the decision for a duration to be determined, but not exceeding 12 months.
  - f) Cancellation of the service approval pursuant to sections 77, 78 and 79 of the *Law*. A cancellation is proposed if the Regulatory Authority reasonably believes that the continued operation of the education and care service would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the education and care service.
- 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.

**Right of response**

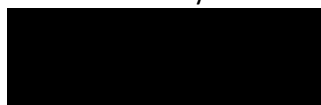
26. As mentioned previously, this notice is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 30 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
27. 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 [jo.williams@act.gov.au](mailto:jo.williams@act.gov.au) or by post to:

Children's Education and Care Assurance  
Attention: Jo Williams  
GPO Box 158, Canberra ACT 2601.

**Caution**

28. 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.
29. The *Law* applies to you as an approved provider and to any service the approved provider operates. 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>.
30. 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>
31. Should you have any questions about this Show Cause Notice please contact Jo Williams, Director Regulatory Operations via email at [jo.williams@act.gov.au](mailto:jo.williams@act.gov.au)

Yours sincerely



Jo Williams  
Director Regulatory Operations  
Education and Care Regulation and Support  
Education Directorate

6 December 2024