



Mr [REDACTED]
Company Director
Abacus49 Pty Ltd

Email: [REDACTED]

Dear Mr [REDACTED]

Show Cause Notice – Proposed Cancellation of Service Approval

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* (the *Law*). 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.
4. The Authority is currently investigating suspected offences relating to the operation of Genius Gungahlin SE-40001554 (the *Service*), operated by Abacus49 Pty Ltd PR--40015589 (the *Provider*).
5. The suspected offences relate to the *Provider’s* ability to operate the *Service* and meet the conditions of the service approval.
6. The Authority has determined that there is sufficient evidence to support a case to answer regarding a suspected offence under the *Law*.
7. However, the Authority’s investigation is not complete until the *Provider* has had an opportunity to respond to the allegations and evidence being relied on by the Authority. This is the reason for sending this Show Cause Notice (the *Notice*) to you, as a person with management or control (PMC) of the *Provider*.
8. Detailed guidance of how to respond appear at the end of this Notice.
9. If substantiated, the allegations may constitute an offence under sections 51 and 167 of the *Law* (or any combination). If, after considering all available evidence, the Authority finds any offence is substantiated, it will need to consider whether compliance action is required.
10. 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 appear at the end of this Notice.

Facts

11. On 19 April 2024, the Provider was approved to operate the Service, after transferring the Service from Approved Provider Alfoom Investments Pty Ltd. Refer copy of service approval at Attachment A.
12. On 17 September 2024, the Authority issued the Provider with a Compliance Notice, resultant from an audit being undertaken by authorised officers on 5 August 2024. The audit undertaken on 5 August 2024 identified multiple non-compliances posing risk to children. Refer copy of Compliance Decision and Notice at Attachment B and Ba.
13. The Provider responded to the Compliance Notice on 1 October 2024, and due to not meeting the requirements of the Compliance Notice was afforded an additional opportunity on 16 October 2024 to respond. The Provider submitted an additional response on 30 October 2024 and 15 November 2024 before the Authority were satisfied that all non-compliance matters had been appropriately addressed. Refer response assessments by the Authority at Attachments C and D.
14. On 6 December 2024, the Authority issued the Provider a Show Cause Notice, resultant from an audit undertaken by authorised officers on 26 November 2024 identifying multiple non-compliances, and including non-compliances identified during the assessment and rating visits that took place between 4 and 6 November 2024. Refer copy of Show Cause Notice at Attachment E.
15. On 20 December 2024, the Authority issued the Provider a final Assessment and Rating Report of Significant Improvement Required (SIR), resultant from an assessment and rating visit by authorised officers undertaken at the Service between 4 and 6 November 2025. Refer copy of Assessment and Rating Report at Attachment F.
16. On 5 February 2025, the Authority issued the Provider with a Decision to Suspend the Service approval, resultant from the show cause process engaged on 6 December 2024. The suspension took effect 20 February 2025 until 5 March 2025 (inclusive) to afford the Provider adequate time to rectify non-compliances, and to put in place staff training, and plans for monitoring service and educator practices to ensure future compliance with the *Law*. Refer copy of Decision and Suspension Notice (minus attachments A through E due to size, but can be provided again upon request) at Attachment G.
17. On 5 March 2025, the Authority issued the Provider with a further Decision to Suspend the Service approval, resultant from an audit at the Service undertaken by authorised officers on the same day.
18. Authorised officers during this visit identified ongoing multiple non-compliances posing an unacceptable risk to children, some of which had been identified during previous visits from the Authority and still not actioned. The ongoing non-compliance demonstrates lack of engagement from the Provider to ensure the health, safety and wellbeing of children.
19. The suspension was determined to be effective immediately for a period of 60 days due to immediate risks posed to children by hazards as observed by authorised offices when

attending the Service. Refer copy of Decision and Suspension Notice (minus attachments A through E due to size but can be provided again upon request) at Attachment H and Ha.

20. The Authority is considering cancellation of the Provider's service approval based on evidence gathered which indicates that the Provider continues to be non-compliant with the Law, and not operating the Service in the best interests of children.

Grounds for issuing the Notice

21. Evidence obtained during the investigation to date supports offences under the *Law* relating to:
- a) Failure to comply with the conditions of a service approval held by the approved provider;
 - b) Failure to protect of children from harms and hazards likely to cause injury;

Allegations

22. The evidence obtained during the investigation raise the following allegation of an offence under the *Law* –

Allegation One

It is alleged that between 17 September 2024 and 5 March 2025, the Provider failed to operate the Service in a way that ensures the safety, health and wellbeing of the children being educated and cared for by the service, in contravention of section 51(1)(a) and (8) of the *Law*, and engaging a contravention of section 167(1) of the *Law*.

Allegation Two

It is alleged that between 17 September 2024 and 5 March 2025, the Provider failed to operate the Service in a way that ensures that it meets the educational and developmental needs of the children being educated and cared for by the service, in contravention of section 51(1)(b) and (8) of the *Law*, and engaging section 167(1) of the *Law*.

Allegation Three

It is alleged that between 17 September 2024 and 5 March 2025, the Provider, by not ensuring compliance with the Law and national regulations, the Provider is not meeting the conditions of the service approval which is placing children at increased risk of harms and hazards likely to cause injury or illness, in contravention of sections 51(5) and (8), and engaging a contravention of section 167(1) of the *Law*.

Legislation Relevant to Allegations

23. Provisions of the *Law* relevant to the allegations are as follows:

Section 51 of Law – Conditions on Service Approval

- (1) A service approval is granted subject to the condition that the education and care service is operated in a way that –
 - (a) Ensures the safety, health and wellbeing of the children being educated and cared for by the service; and
 - (b) Meets the educational and developmental needs of the children being educated and cared for by the service.
- (5) A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by –
 - (a) this Law; or
 - (b) the Regulatory Authority.
- (8) An approved provider must comply with the conditions of a service approval held by the approved provider.

Penalty: \$11 400, in the case of an individual
\$57 400, in any other case.

Section 167(1) of 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.

Evidence Relevant to the Allegations

24. Repeated and ongoing non-compliance with the *Law*, and associated Regulations, as demonstrated via Attachments B through Ha.
25. Authorised Officer statements relating to the audit undertaken at the Service on 5 March 2025 – refer Attachment I and Ia.

Potential Compliance Action

26. The Authority reiterates that no decision has been made at this time – this letter is a step in the regulatory process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions for the Authority to consider if the offence is substantiated. Potential compliance actions include:
 - a) Cancellation of the service approval pursuant to sections 77 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.
27. 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.

28. Refer Attachment J for provisions of the *Law* relevant to allowable potential compliance actions.

Right of response

29. 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.
30. At Attachment K 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 or by post to:

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

Caution

31. 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.
32. 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>.
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 Jo Williams, Director Regulatory Operations via email at jo.williams@act.gov.au

Yours sincerely



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

6 March 2025