

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

Dear [REDACTED]

Show Cause Notice – Proposed Prohibition

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance. As you may be aware, the Authority is the regulator of education and care services in the ACT and is responsible for monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the Law). One of the Authority's roles is to investigate suspected offences under the Law.
2. The Authority has received information regarding allegations that on 5 October 2021, you inappropriately disciplined a child, [REDACTED], who was in your personal care, and, on 26 October 2021, you used inappropriate methods to keep child, [REDACTED], in bed, whilst employed as an educator at Artemis Early Learning Fyshwick, SE-40002132 (the Service) operated by Canberra Childcare Pty Ltd ATF The Fyshwick Child Care Trust, PR-00005814 (the Provider).
3. The Authority's records indicated that you were a nominated supervisor of the Service at the time of the alleged incidents.
4. 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.
5. The Authority does not intend to make further enquiries into this matter (unless new relevant information emerges) however, the Authority cannot proceed to the proposed Prohibition Notice or any other compliance action until you have had an appropriate opportunity to respond to the allegations and evidence obtained. This is the reason for sending this Show Cause Notice (Notice) to you.
6. Detailed instructions of how to respond appear at the end of this Notice.

Grounds for issuing Show Cause Notice for Proposed Prohibition.

7. On 20 December 2021, the Authority received notification (NOT-40605787) from the Provider regarding your conduct toward children while employed as an educator at the Service. Refer Attachment A.
8. The Provider also advised they had investigated the allegations, gathering witness accounts/summaries, reviewing video footage (no longer available) and conducting a

workplace interview with you. The Provider advised your employment at the Service had been terminated. Refer Attachment B for investigation documents.

Allegations

Allegation One

9. It is alleged that, on the afternoon of 5 October 2021, whilst educating and caring for children in the Preschool room of the Service, you smacked the bottom of a child in your personal care [REDACTED] pulled his hair, yelled at him and isolated him in a kitchenette before removing him after several minutes, taking him to the bathroom, again yelling at him and smacking him several more times, which occurred in view of children enrolled at the Service.

Allegation Two

10. It is alleged on 26 October 2021, you, grabbed a child, [REDACTED], and returned them to their bed multiple times, for the purpose of resting, with the child apparently wanting to play, causing distress to the child.

Evidence relevant to Allegations

11. Evidence relevant to the allegations obtained from the Provider include:
- a) Witness accounts/summaries; and
 - b) Meeting Minutes dated 03/11/2021.
12. Relevant extracts from witness accounts/summaries appear below, with personal information redacted where not required for procedural fairness purposes. These extracts are also contained in Attachment B, together with a document entitled "Disciplinary Meeting Guidance and Minutes" which appears to be signed by you on page 3.
13. The Authority has been advised that [REDACTED] was the child of your partner and was not enrolled at the Service. The Authority is not aware of [REDACTED] surname.

Witness Evidence Relevant to Allegation One

14. Relevant extracts from Witness A's account:

[REDACTED]

[REDACTED]

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

15. Relevant extracts from Witness B's account (review of CCTV):

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]

16. Relevant extracts from Witness C's account (review of CCTV):

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Witness Evidence Relevant to Allegation Two

17. Relevant extracts from Witness B's account (review of CCTV):

■ [REDACTED]
[REDACTED]
[REDACTED]

18. Relevant extracts from Witness C's account (review of CCTV):

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Risk Engaged by Evidence

19. The evidence currently available to the Authority, relevant to the allegations, appears to indicate that, on 5 October 2021 you subjected a child in your personal care to significant inappropriate discipline and, on 26 October 2021, you subjected a child being educated and cared for by the Service to inappropriate interactions. This conduct, if substantiated, is sufficient grounds to support that there may be an unacceptable risk of harm to a child or children if you are permitted to provide education and care to children.

Fitness and Propriety as Nominated Supervisor

20. The evidence currently available to the Authority also raises questions of fitness and propriety to be in a role as nominated supervisor. This question will only require consideration by the Authority if, after considering all available evidence (including any further response from you), the Authority decides that you do not pose an unacceptable risk of harm to children.
21. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:
- a. be over 18 years of age;
 - b. have adequate knowledge and understanding of the provision of education and care to children; and
 - c. have the ability to effectively supervise and manage an education and care service.

22. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the position and may change over time to meet social and political expectations. At minimum, fitness and propriety includes honesty, knowledge, and ability.
23. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities), and also possess the ability to manage educators and any other staff, service premises and relationships with families.
24. The information currently available to the Authority raises a concern about your ability to manage and supervise an education and care service.
25. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

Potential Compliance Actions

26. If, after consideration of any response by you to this Show Cause Notice, the allegations are found to be substantiated on the balance of probabilities, the Authority will need to consider the level of action required. Potential statutory actions may include the proposed prohibition under section 182(1) of the *Law*, partial prohibition under section 182(3) of the *Law*, or an enforceable undertaking as set out below:

Law

Section 182 of the Law – Grounds for giving 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 approved 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 and care service premises; or
 - (b) to provide education and care to children.
- (2) For the purposes 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
- (3) The Regulatory Authority may give a prohibition notice to a person to –
 - (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
 - (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Section 183 – Show cause notice to be given before prohibition notice

- (1) Before giving 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.

Section 179A of the Law – Enforceable undertaking

- (1) This section applies-
 - a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
 - b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1) (a) applies the Regulatory Authority may accept a written undertaking from the person under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.

Effect of a Prohibition Notice

- 27. If the Authority decides to issue a prohibition notice, you must not do the following while the prohibition notice is in force:
 - (a) provide education and care to children for an education and care service; or

- (b) be engaged as an educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or
 - (c) carry out any other activity relating to education and care services.
28. A partial prohibition only applies to the role of nominated supervisor and not to the education and care sector as a whole. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

Effect of an Enforceable Undertaking

29. An Enforceable Undertaking is a formal “promise” to the Authority to do or not do certain things. Terms vary, but examples of requirements are:
- a. only working with children under supervision;
 - b. doing some additional training to improve your skills as an educator;
 - c. keeping the Authority advised of your workplace; and/or
 - d. having an approved mentor.
30. It is a flexible way to ensure ongoing compliance with the *Law* and *Regulations* and may be appropriate depending on the level of risk to children.
31. If you offer an enforceable undertaking and the Authority accepts it, failure to comply with any of its terms after acceptance allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *Law* to enforce the undertaking.

Right of response

32. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety.
33. You may, within 14 days of receiving this Notice, make a written submission for the Authority’s consideration in deciding if the allegations are substantiated, the level of risk to children and whether any compliance action should be taken.
34. At Attachment C to this Notice is a ‘4 Step Guide to Responding to a Show Cause Notice’ to assist in the development of your submission.
35. Please direct your written submission via email to Senior Investigator Brian Cropper at Brian.Cropper@act.gov.au or by post to:

Brian Cropper -Senior Investigator
Children's Education and Care Assurance
GPO Box 158,
CANBERRA ACT 2601

Caution

36. 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.

Legislation

37. The *Law* applies to you as a former nominated supervisor and educator and to any service you may be employed at. 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* can be viewed at: <http://www.acecqa.gov.au/national-law,and>
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

38. Should you have any questions about this Show Cause Notice please contact Brian Cropper by email at Brian.Cropper@act.gov.au.

Yours sincerely,



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

20 January 2022