



Ms [REDACTED]

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Propose an Enforceable Undertaking

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted inquiries after receiving notification of an allegation that you inappropriately disciplined a child on 7 May 2020 at Binara Early Childhood Centre SE-00009750 (the Service), operated by Community Services #1 Incorporated PR-00005865 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.

Show Cause Notice

3. On 16 June 2020, you were issued with a Show Cause Notice (the Notice) by the Authority, which advised you that:
 - a. The Authority had been notified of allegations regarding your conduct towards children when employed as an educator at the Service;
 - b. Evidence gathered supported an allegation of inappropriate discipline, which is an offence under section 166(3) of the Law;
 - c. It was alleged that, on 7 May 2020, in the Goannas' room when children were sitting around a table and banging it, you subjected a child being educated and cared for by the Service [REDACTED] to inappropriate discipline by restraining his hands and then pulling his chair away from the table, whereupon the child fell on the floor;
 - d. It was further alleged that you had used your foot to move a child on more than one occasions and used derogatory language to describe children. Although such actions do not fall within inappropriate discipline and are not an offence under the Law, they are not appropriate interactions with children, as described in Regulation 155.
4. The Notice outlined the information received and provided you with an opportunity to respond before any compliance action was taken.

Refer Attachment A for a copy of the Notice.

Your Response

5. On 17 and 18 June 2020, you sought further clarification regarding the Notice, via email with an Authorised Officer.

Refer Attachment B for a copy of the emails exchanged.

6. On 6 July 2020, your response to the Notice (Response) was received by the Regulatory Authority.
7. Refer Attachment C for a copy of your Response.

Relevant Legislative Provisions

Section 166(3) – Offence to Use Inappropriate Discipline

- (3) A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to:
 - (a) any form of corporal punishment;
 - (b) any discipline that is unreasonable in the circumstances.

Section 179A - Enforceable undertakings

- (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.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (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.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Authority's Decision and Reasons

8. The Authority has considered your Response, which raised the following points:

- a. You admitted the allegation of inappropriate discipline of [REDACTED] on 7 May 2020 and having moved children with your foot on two occasions;
 - b. You denied calling children “bastards”, but conceded referring to them as pains in the butt”;
 - c. You referred to levels of stress caused by the fires earlier in 2020 and that you had trouble moving on from that;
 - d. You referred to having trouble handling anger and frustration;
 - e. You expressed regret for your actions and have decided that early education is not an appropriate sector for you to work in at the moment, resigning on 15 May 2020;
 - f. You advised that you are now taking anti-depressant medication and are seeking to engage with a psychologist for support in mental health and strategies to manage stressful situations.
9. Considering the entirety of the evidence (including your admissions and surrounding circumstances outlined above in your Response and summarised in paragraph 8), and the level of risk to children, the Authority has determined that the most appropriate course of action is to offer an enforceable undertaking under section 179A of the *Law*. The proposed enforceable undertaking is attached and marked Attachment D.
10. The terms specified require that you not work within the early education and care sector whilst the undertaking is in force. In order for the Authority to consider withdrawing the undertaking, you would need to satisfy the Authority that you are a fit and proper person to be involved in the provision of education and care to children. That may involve, for example, demonstrating further training in how to appropriately guide children’s behaviour, and providing evidence that your mental health would not to constitute a risk to children.
11. If the enforceable undertaking is accepted, failure to comply with any of its terms allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *National Law* to enforce the undertaking.
12. If you do not accept the enforceable undertaking, this may result in the Authority considering prohibition notice under section 182 of the *Law*. Should a decision be made to issue a prohibition notice, you would be immediately prohibited from doing one or more of the activities specified in section 185(1) of the *Law*, which appears below:

Section 185 of the *Law* – Content of Prohibition notice

- (1) A prohibition notice given to a person under section 182(1) must state that the person is prohibited from doing one or more of the following –
- (a) Providing education and care to children for an education and care service;
 - (b) 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;
 - (c) Carrying out any other activity relating to an education and care service.

13. To accept the undertaking please sign for the "Person" on Attachment D and return to Authorised Officer Tanya Masterman within 14 days of receiving this decision. The undertaking may be returned via email at tanya.masterman@act.gov.au or by post to:

Children's Education and Care Assurance
Attn: Tanya Masterman
GPO Box 158
CANBERRA ACT 2601

14. If you elect to return the signed undertaking by post, please advise by email as, due to COVID-19, Authorised Officers are working remotely.
15. A countersigned copy will be returned for your records.

Legislation

16. The *National Law* applies to you as an educator employed within the early education and care sector.
17. The *National 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>.
18. The *National Law* and *National Regulations* can be viewed at:
<http://www.acecqa.gov.au/national-law,> and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
19. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman on (02) 6205 2012 or by email at tanya.masterman@act.gov.au.

Yours Sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation
ACT Education Directorate

20 July 2020