



[REDACTED]
Person with Management or Control
Grassroots Childcare Operations Pty Ltd
RE: Hearts & Minds Early Learning McKellar

Email: [REDACTED]

Dear Ms [REDACTED],

Show Cause Notice – Proposed Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA).
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 investigate suspected offences under the *Law*.
3. The Authority is currently investigating multiple suspected offences at Hearts & Minds Early Learning McKellar – SE-40025658 (the Service) operated by Grassroots Childcare Operations Pty Ltd – PR-40022092 (the Provider). 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. Authorised Officers have obtained evidence from other sources and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the investigation is not complete until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
5. If substantiated, the allegations may constitute offences under sections 166 and 167 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
6. Where offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

7. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
 - a) Inappropriate discipline
 - b) Protection from harms and hazards.

Facts

8. On 5 March 2024, the ACT Regulatory Authority (the Authority) received a notification of complaint alleging that a current staff member used inappropriate discipline by grabbing a child by the arm to move him away from a water bubbler. Refer Attachment A.
9. On 5 March 2024, further information was furnished by Provider upon request including the following relevant documents:
 - a) The child subject to the notification details.
 - b) A summary of a conversation between the Centre Director and a parent of the Child. Refer to Attachment B.
10. Due to the risk of harms and hazards likely to cause injury if children are subject to inappropriate interactions amounting to discipline, the Authority determined to investigate, engaging suspected offences under sections 166(1) and 167(1) of the *Law*.

Grounds for notice

Allegation

1. It is alleged that on 4 March 2024, the Provider, failed to ensure that no child was subjected to corporal punishment, or discipline that is unreasonable in the circumstances, in that educator, [REDACTED], taking the child, [REDACTED] (4:2) by the arm, pulling his arm above shoulder height, in order to redirect him away from a water bubbler, in contravention of Section 166(1) of the National Law and giving rise to a contravention of section 167(1) of said *Law*.

Legislation Relevant to the Allegation

11. The following provisions of the *Law* are relevant to the Allegation:

Section 166(1) of the Law - Offence to use inappropriate discipline

The Approved Provider of an education and care service must ensure that no child being educated and cared for by a service is subjected to-

- (a) Any form of corporal punishment ; or
- (b) Any discipline that is unreasonable under the circumstances.

Penalty: \$10 000, in the case of an individual

\$50 000, in any other case.

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: \$10 000, in the case of an individual
\$50 000, in any other case.

Regulation 155 provides that 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.

Evidence relevant to the Allegation

12. On 3 May 2024, the Provider furnished documents pursuant to 215 Notice including the following relevant documents:

- a) Child Attendance
- b) Working Directly with Children records
- c) Policy and procedures
- d) Personnel file [REDACTED]
- e) ACT Ombudsman Reportable Conduct Scheme 17G
- f) Internal Investigation

Refer Attachment C.

13. Documentation furnished by Provider identify the following:

- a) Ms [REDACTED] was an educator at the Service.
- b) An unsigned file note believed to be completed by Ms [REDACTED] records a conversation between Ms [REDACTED] and Ms [REDACTED] where Ms [REDACTED] makes admissions to removing [REDACTED] hand from the tap by holding his wrists. Refer Attachment D.
- c) There is no evidence of a positive behaviour support plan for [REDACTED] or the restrictive practice was authorised.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. Relevant extracts from Witness C's statement include:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Contraventions supported by evidence.

2. Evidence gathered appears to support that [REDACTED] was subjected to corporal punishment, in that he was grabbed on the wrists by Ms [REDACTED] contravening section 166(2) of the *Law*, and giving rise to a contravention of 167(2) of the *Law*.

18. Ensuring that no child is subjected to corporal punishment, or discipline unreasonable in the circumstances, is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury.

Potential Compliance Action

19. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions if an 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 under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.

- f. Cancellation of the service approval under section 79 of the *Law*.
20. 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.
21. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

Right of response

22. As mentioned previously, this is the Provider's opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 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.
23. At Attachment E 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 Jarrod.Reid@act.gov.au or by post to:

Children's Education and Care Assurance (CECA)
Education Directorate
Attention: Jarrod REID
GPO Box 158, Canberra ACT 2601.

Caution

24. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
25. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
26. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
27. The *Law* applies to you as a provider and any service you operate. 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>.
28. 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>
29. Should you have any questions about this Show Cause Notice please contact Jarrod REID on Jarrod.Reid@act.gov.au.

Yours Sincerely



Nicole Withers
A/g Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

25 July 2024