

Ms [REDACTED]
Nominated Supervisor

[REDACTED]
RE: YWCA Richardson School Age Care

Email: [REDACTED]

Dear Ms [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. 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*.
2. As you may be aware, the Authority is currently investigating suspected offences at YWCA Richardson School Age Care SE-40009747 (the Service) operated by The Young Women's Christian Association of Canberra PR-00005876) (the Provider).
3. Investigation of suspected offences is related to allegations that a child (6years), attending the Service, was dragged along the floor by two older boys and suffered injuries, which the parent was not informed of on 30 June 2022.
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. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge) and the Authority has determined that there is sufficient evidence to support a case to answer regarding suspected offences under the *Law*. However, the Authority’s investigation is not complete until you have had an opportunity to respond to the allegation/s and evidence obtained by the Authority. 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.
7. If substantiated, the allegation/s may constitute offences under sections 165 and 167 of the *Law* (or any combination). If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required.
8. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

9. The evidence obtained during the investigation to date supports offences under the *Law* within the following area –
 - a) Supervision and Protection of children from harms and hazards likely to cause injury; and
 - b) Unauthorised persons being allowed to remain on premises.

Allegations relating to Law

10. The evidence obtained during the investigation raise the following allegations of offences under the *Law* –

Allegation One

11. It is alleged that, on 30 June 2022, the Nominated Supervisor failed to ensure that all children were adequately supervised at all times, in that a child, believed to be [REDACTED], suffered significant abrasions to his back as a result of an unchallenged game, contravening section 165(2) of the *Law* and also giving rise to a contravention of section 167(2) of the *Law*.

Allegation Two

12. It is alleged that, on 30 June 2022, the Nominated Supervisor failed to ensure that unauthorised persons did not remain on the Service premises while children were being educated and cared for, contravening section 170(3) of the *Law*.

Allegation Three

13. It is alleged that, that between 20 June 2022 and 1 July 2022 inclusive, the Nominated Supervisor failed to take reasonable steps to ensure the responsible person in day-to-day charge had adequate qualifications, knowledge, understanding and ability to effectively protect children from harm and hazard likely to cause injury through the supervision and management an education and care service, contravening section 167(2) of the *Law*.

Background

14. On 2 July 2022, the Authority received a complaint alleging that inadequate supervision on 30 June 2022 had resulted in an enrolled child being dragged across carpet by older children, unchallenged by educators, resulting in the child sustaining significant carpet burns to his back and requiring medical attention.
15. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at the Service and a decision was made to investigate suspected offences under sections 165 and 167 of the *Law*.
16. As lines of enquiry were being undertaken by the Authority, additional suspected nominated supervisor offences under section 170 and 167 arose.

Allegation One

17. It is alleged that, on 30 June 2022, the Nominated Supervisor failed to ensure that all children were adequately supervised at all times, in that a child, believed to be [REDACTED], suffered significant abrasions to his back as a result of an unchallenged game, contravening section 165(2) of the *Law* and also giving rise to a contravention of section 167(2) of the *Law*.

Legislation Relevant to Allegation One

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

Section 165(2) of the Law - Offence to inadequately supervise children

A nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000

Section 167(2) of the Law - Offence relating to protection of children from harm and hazards

A nominated supervisor 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.

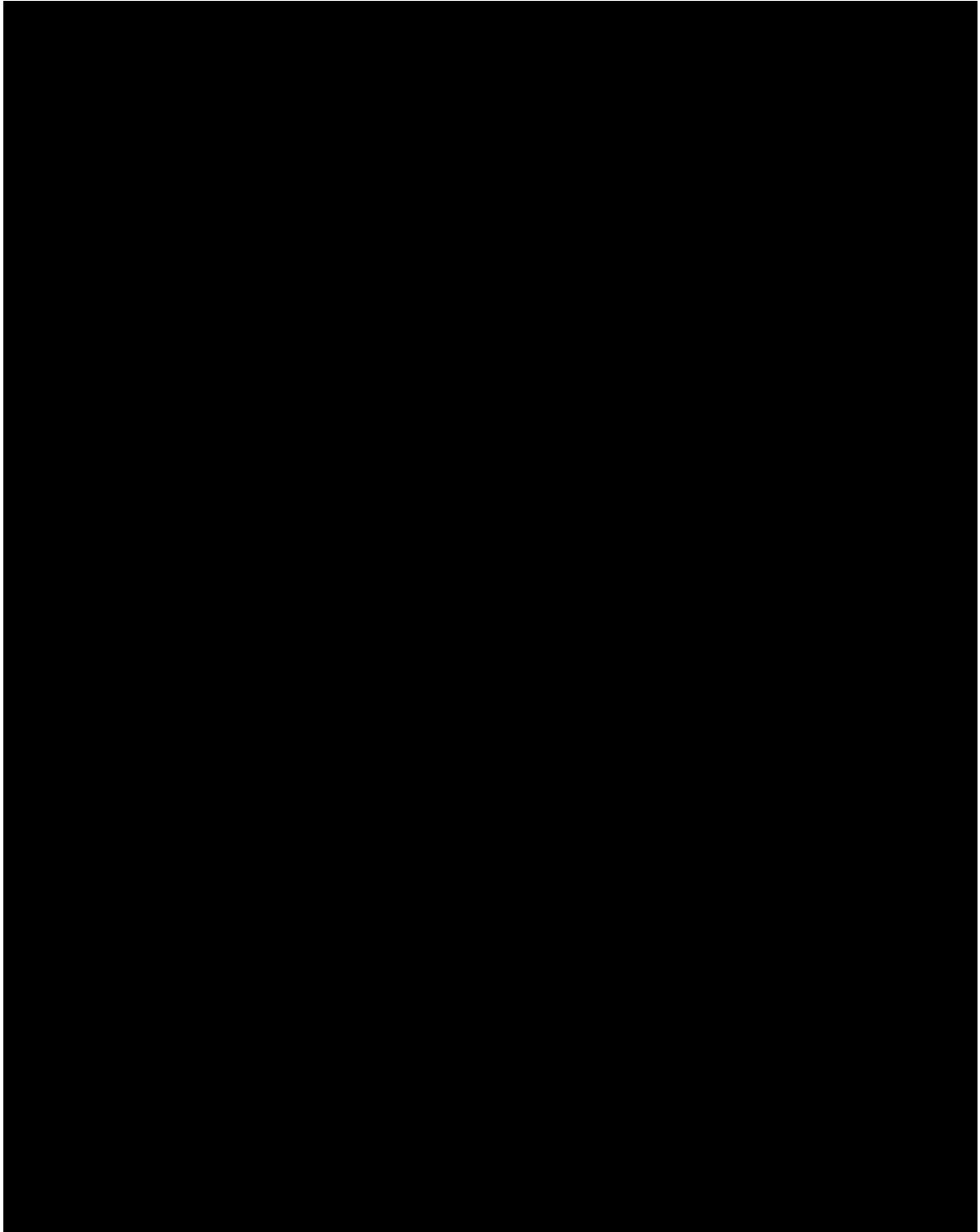
Penalty: \$10 000

Evidence Relevant to Allegation One

19. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Refer records of all documents submitted at Attachment A.
20. Relevant evidence to this allegation submitted by the Provider included:
- a) Educator Working Directly with Children Records and Child Attendance records for 30 June 2022, indicating seven children in attendance for the before school program and two educators. Refer Attachment B
 - b) Copies of emails between Ms [REDACTED] and the Provider, and Provider enquiries into the matter. Refer Attachment C
 - c) Copy of incident report for [REDACTED]. Refer Attachment D
 - d) Copies of policy, procedures and supervision plan. Refer Attachment E
 - e) Nominated Supervisor, responsible person and staff records, identifying yourself as the Services Nominated Supervisor and [REDACTED] as educator and responsible person onsite on 30 June 2022. Refer Attachments B and F
21. The Provider also submitted, in response to the Authority's request of 19 August 2022, qualification and training records for two staff, [REDACTED] and [REDACTED]. Refer Attachment G
22. As part of the investigation, the Authority obtained a statement from the original complainant and witnesses, relevant excerpts from which are included below.

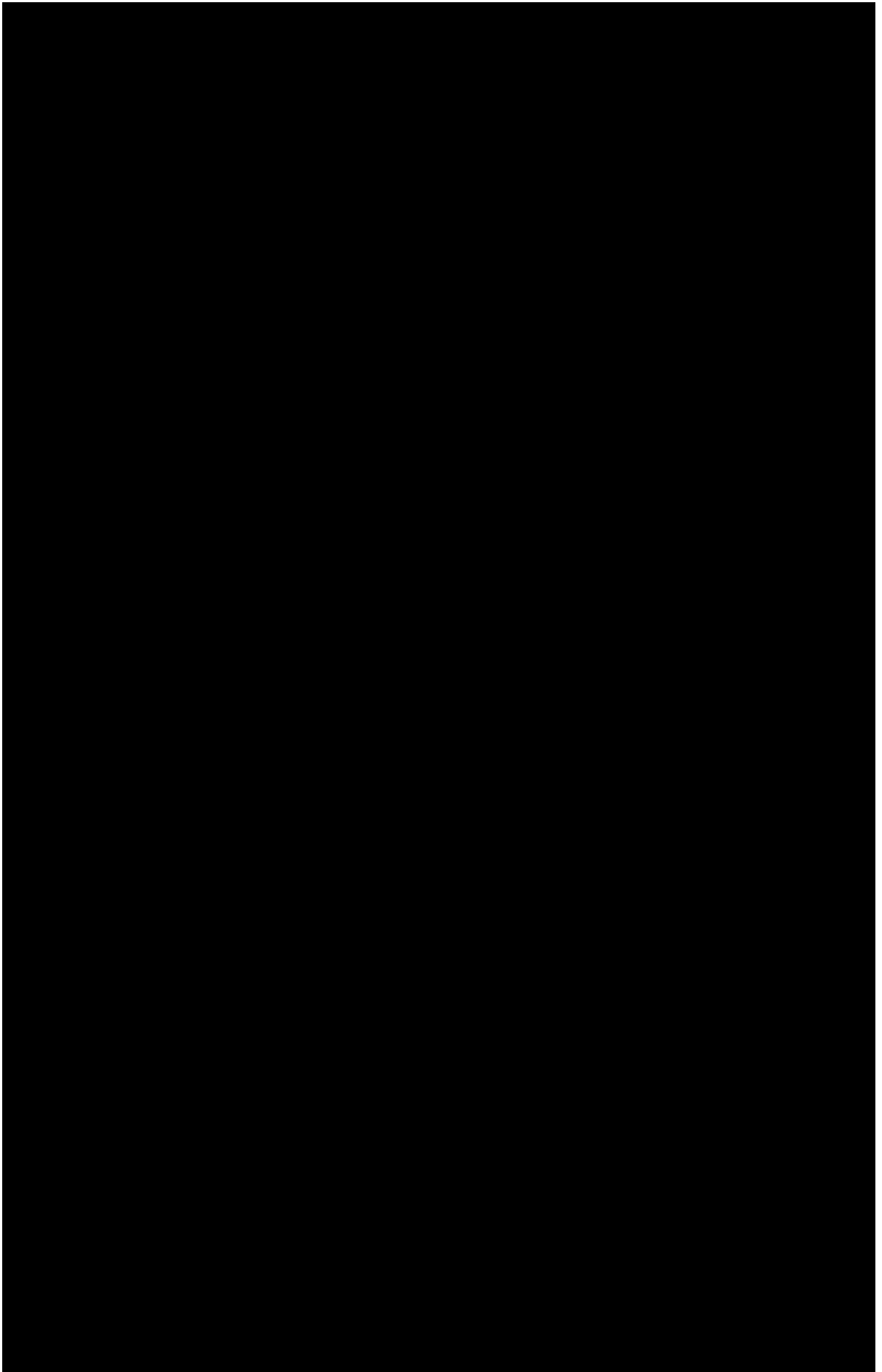
23. Please note that all witness statements were obtained exercising powers under section 215 of the *Law*. To clarify, all witnesses were compelled by notice to attend before Authorised Officers and provide evidence. Failure to comply is an offence under the *Law*, as is obstructing or hindering the Authority's investigation.

24. Relevant extracts from Complainant 's statement is:



Refer Attachment H for photos of injury submitted to the Authority.

25. Relevant extracts from Witness A's statement are:





Contraventions Supported by Allegation One

26. Evidence gathered appears to support contraventions of sections 165(2) and 167(2) of the *Law*.

Allegation Two


27. It is alleged that that on 30 June 2022, the Nominated Supervisor failed to ensure that unauthorised persons did not remain on the Service premises while children were being educated and cared for, contravening section 170(3) of the *Law*.

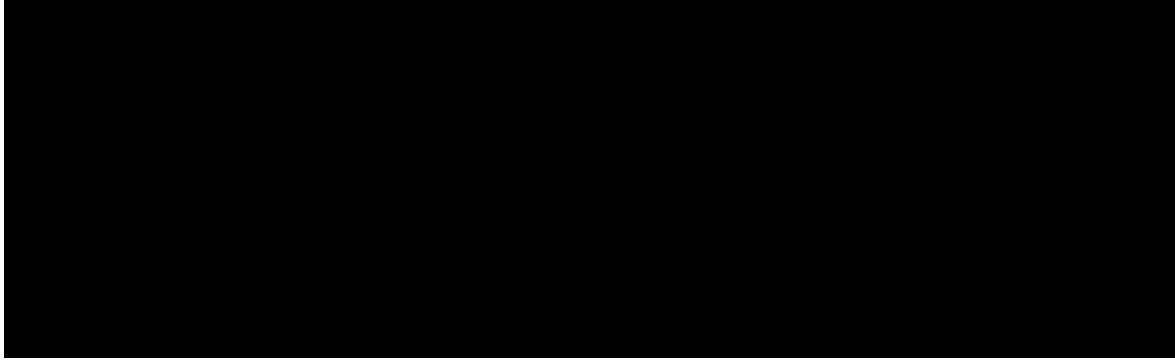
Legislation Relevant to Allegation Two

Section 170 – unauthorised persons on education and care service premises

- (1) This section applies to an education and care service operating in a participating jurisdiction that has a working with children law.
- (3) A nominated supervisor of the education and care service must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless-
- (a) The person is an authorised person-
 - (b) The person is under the direct supervision of an educator or other staff member of the service.
- Penalty: \$1000
- (5) In this section- **authorised person** means a person who is-
- (a) A person who is holds a current working with children check or working with children card;
 - (e) A person who is permitted under the working directly with children law of this jurisdiction to remain at the education and care service premises without holding a working with children check or a working with children card.

Evidence Relevant to Allegation Two

28. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Refer relevant evidence to this allegation at Attachment C.
29. As mentioned, additional evidence was obtained during the investigation from the complainant and witnesses, utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.
30. Relevant extracts from Witness A 's statement is:
- 



Contravention supported by Allegation Two

- 31. Evidence gathered appears to support a contravention of section 170(3) of the *Law*.

Allegation Three

- 32. It is alleged that, that between 20 June 2022 and 1 July 2022 inclusive, the Nominated Supervisor failed to take reasonable steps to ensure the responsible person in day-to-day charge had adequate qualifications, knowledge, understanding and ability to effectively protect children from harm and hazard likely to cause injury through the supervision and management an education and care service, contravening section 167(2) of the *Law*.

Legislation Relevant to Allegation Three

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

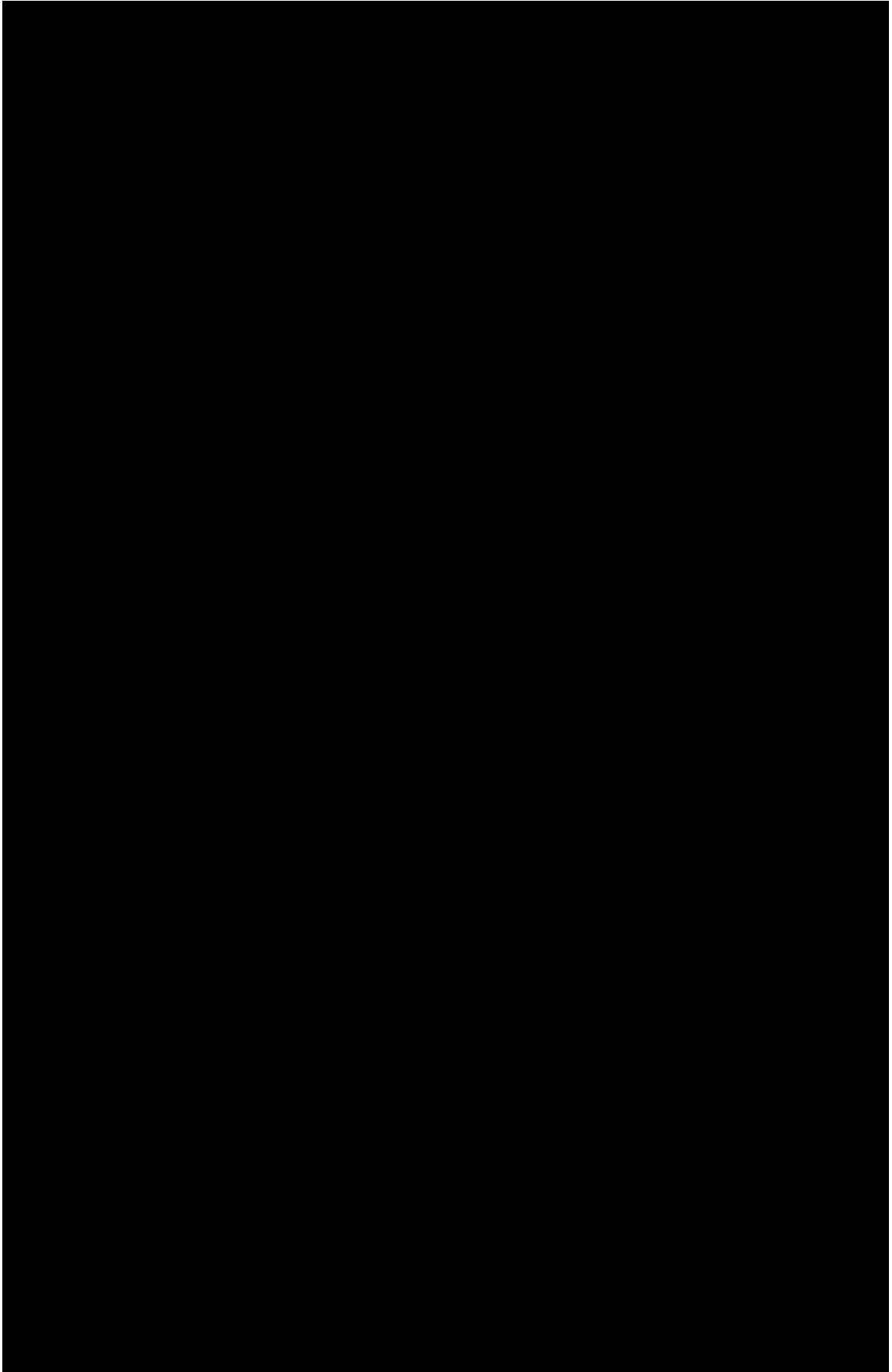
A nominated supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$10 000

Evidence Relevant to Allegation Three

- 33. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Refer relevant evidence to this allegation at Attachments E, F and G.
- 34. Evidence relevant to this allegation includes:
 - (a) Copies of submitted training and qualifications for [REDACTED].
 - (b) Copy of Responsible Person Form for [REDACTED].
 - (c) Copy of signed Supervision Plan.
- 35. As mentioned, additional evidence was obtained during the investigation from the complainant and witnesses, utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.

36. Relevant extracts from Witness A's statement is:





Contravention supported by Allegation Three

37. Evidence gathered appears to support a contravention of section 167(2) of the *Law*.

Potential Compliance Action

38. 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 any offences are substantiated. Potential compliance actions include:
- a. Non-statutory action such as a formal caution letter;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from acting in a role as Nominated Supervisor.
39. Relevant legislation for enforceable undertakings and partial prohibition appears below.
40. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, or advising the Authority of any proposed change in employment.

41. 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.

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.

Section 182(3) - Grounds for issuing a prohibition notice

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.

Right of response

42. As mentioned previously, this notice is your opportunity to respond to the allegations and evidence set out in this Notice.

43. 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.
44. At Attachment I 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 brian.cropper@act.gov.au or by post to:

Children's Education and Care Assurance
Attention Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

45. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are **protected disclosures** under section 296 of the *Law*.
46. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
47. 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.
48. The *Law* applies to you as nominated supervisor and to any service are 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>.
49. 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>
50. Should you have any questions about this Show Cause Notice please contact Authorised Officer Brian Cropper via email at brian.cropper@act.gov.au.

Yours sincerely



Jo Williams
Director
Education and Care Regulation and Support
ACT Education Directorate

12 September 2022