

Ms [REDACTED]
Nominated Supervisor
RE: YWCA Kingsford Smith 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. Authorised Officers are investigating suspected offences under the *Law* relating to the operation of YWCA Kingsford Smith School Age Care - SE-00009735 (the Service) operated by The Young Women's Christian Association of Canberra - PR-00005876 (the Provider).
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. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge). 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.
5. Detailed instructions of how to respond appear at the end of this Notice.
6. If substantiated, the allegation/s may constitute offences under sections 167(2) of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required.
7. 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 include the following (further details appear at the end of this Notice):
 - a. The Authority issuing you with an official caution;
 - b. An Enforceable Undertaking pursuant to section 179A of the *Law*;
 - c. Prohibition from acting in a role as Nominated Supervisor (or conditions being imposed on being in that role) pursuant to section 182(3) of the *Law*.

Grounds for issuing Show Cause Notice

8. The evidence obtained during the investigation support two counts of an offence under the *Law* within the area of failing to protect children by taking reasonable precautions.
9. On 21 February 2022, the Authority received a direct complaint relating to the operation of the Service and in particular, allegations of inadequate support and inappropriate interactions between educators and children with challenging behaviours.
10. Specifically, the complaint alleged that between 24 and 27 January 2022 during Vacation Care, there was insufficient plans and strategies communicated to educators for the appropriate support of children with challenging behaviours, including a child by the name of [REDACTED]. It was further alleged this information was communicated to the Provider in the form of a complaint.
11. Due to the risk of children being exposed to harms and hazards resulting from inadequate support for their challenging behaviours and failure to notify of complaints, the Authority determined to investigate suspected offences under sections 167 of the *Law*.
12. Information received during the investigation provided reasonable grounds to suspect additional offences under 167 of the *Law*.
13. The Authority is considering compliance action based on the evidence gathered that indicate contraventions of the *Law*. Specifically, evidence gives grounds to support the following two allegations:

Allegation One - It is alleged that between 24 and 28 January 2022 inclusive, you, as nominated supervisor of the Service, failed to ensure that every reasonable precaution was taken to protect children of the Service from harm and any form of hazard likely to cause injury. Specifically, it is alleged that educators were not provided with relevant formalised strategies and plans, adequately communicated to staff, to guide and support children with challenging behaviours or needs, believed to be [REDACTED], [REDACTED] and [REDACTED], contravening s167(2) of the *Law*.

Allegation Two - It is alleged that between 24 and 28 January 2022 inclusive, you, as nominated supervisor of the Service, failed to ensure that every reasonable precaution was taken to protect children of the Service from harm and any form of hazard likely to cause injury, in that, [REDACTED] was not recorded as having attended the Service, as required by *Regulation 158(1)* and *Regulation 177(2)*, contravening section 167(2) of the *Law*.

Facts:

Allegation One:

14. It is alleged that between 24 and 28 January 2022 inclusive, you, as nominated supervisor of the Service, failed to ensure that every reasonable precaution was taken to protect children of the Service from harm and any form of hazard likely to cause injury. Specifically, it is alleged

that educators were not provided with relevant formalised strategies and plans, adequately communicated to staff, to guide and support children with challenging behaviours or needs, believed to be [REDACTED], [REDACTED] and [REDACTED], contravening s167(2) of the *Law*.

Legislative Provision Relevant to Allegation One:

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, in the case of an individual

Evidence Relevant to Allegation One

15. On 4 April 2022 and 20 May 2022, the Provider furnished documents pursuant to a notice allowable under section 215 of the *Law*, that includes the following:
 - a) The Service was educating and caring for children during the week of 24 to 28 January 2022 inclusive. (Except 26/01/2022-Australia Day).
 - b) [REDACTED] and [REDACTED] were enrolled children in attendance during that week.
 - c) Medical Minimisation and Communication plan, and associated reports for [REDACTED]
[REDACTED]
 - d) Enrolment form for [REDACTED] and Psychologist Assessment Report dated 16/02/2022 for [REDACTED]
 - e) Service Strategic Inclusion Plan.
16. Furthermore, a confirmation email from the Provider outlined the enrolment dates of the following children:
 - a) [REDACTED] 26/02/2018.
 - b) [REDACTED] 20/04/2021.
 - c) [REDACTED] 20/12/2021 (holiday programs only).

Refer to Attachment A for documents and email.

17. The documents appear to support the following:
 - a) [REDACTED] enrolment records indicate his needs and include a Medical Minimisation plan, and associated medical review, that appears to have been signed and dated by all parties, including educators, on 21 February 2022.

- b) ██████████ enrolment records identify his needs inclusive of a Psychologist Assessment. There are no associated medical Minimisation Plan.
 - c) There is no evidence of any plans or strategies to support ██████████ behavioural needs while attending the Service.
 - d) Service Strategic Inclusion Plan is incomplete where related to Vacation Care.
18. Authority records indicate that you were the Nominated Supervisor for the Service during the week of 24 to 28 January 2022 inclusive. Refer to Attachment B.
19. During the investigation, the Authority also obtained evidence from a witness with relevant excerpts appearing below. Due to the specific circumstances of the allegation, it is likely the witness can be identified from the content of the excerpts. Please note statements were obtained using powers under section 215 of the *Law*, compelling the witness to provide relevant evidence to an Authorised Officer.
20. Relevant excerpts from statement of Witness A include:





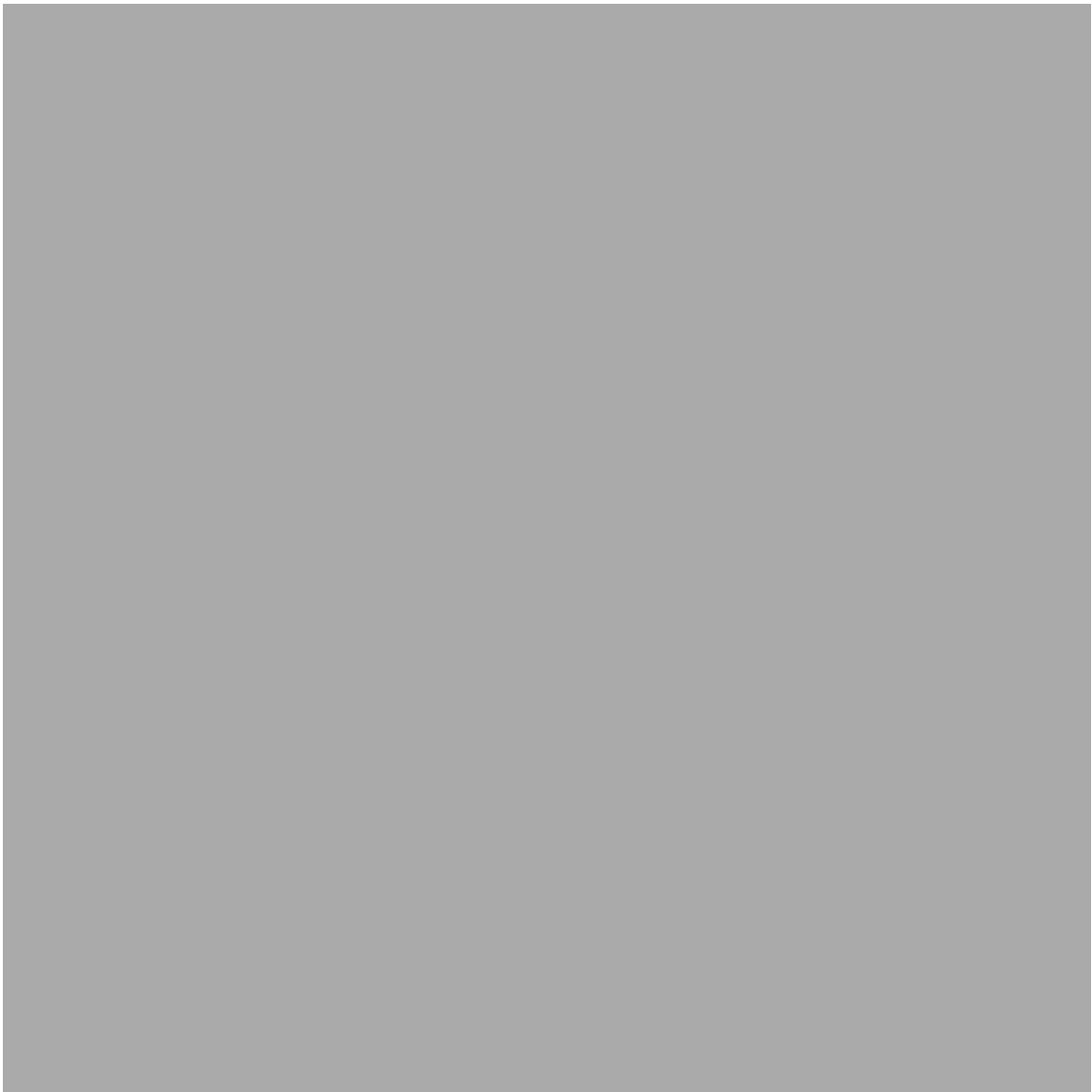
21. Excerpts from statement of Witness B include:





22. Excerpts from statement of Witness C include the following:





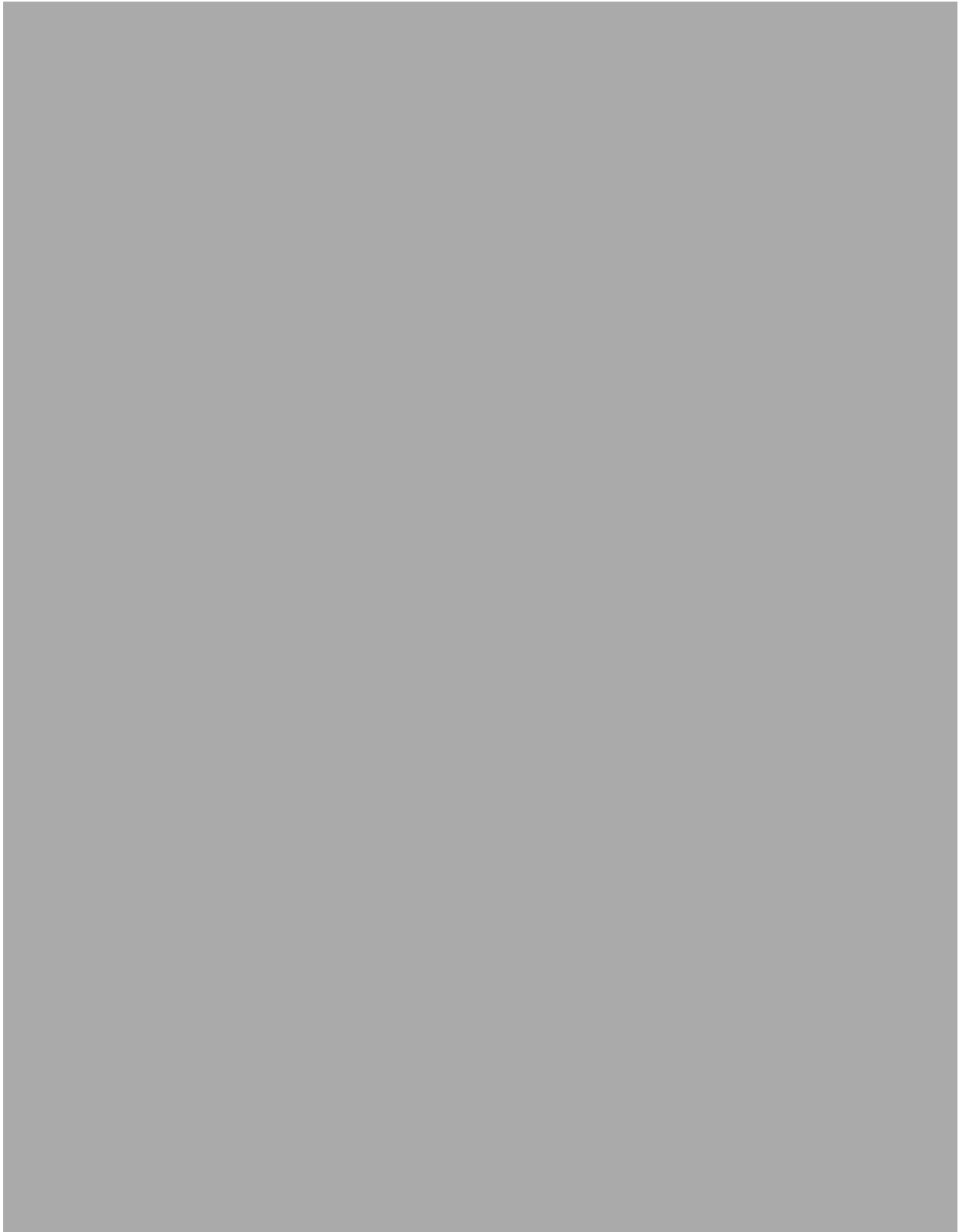
23. Excerpts from statement of Witness D include:





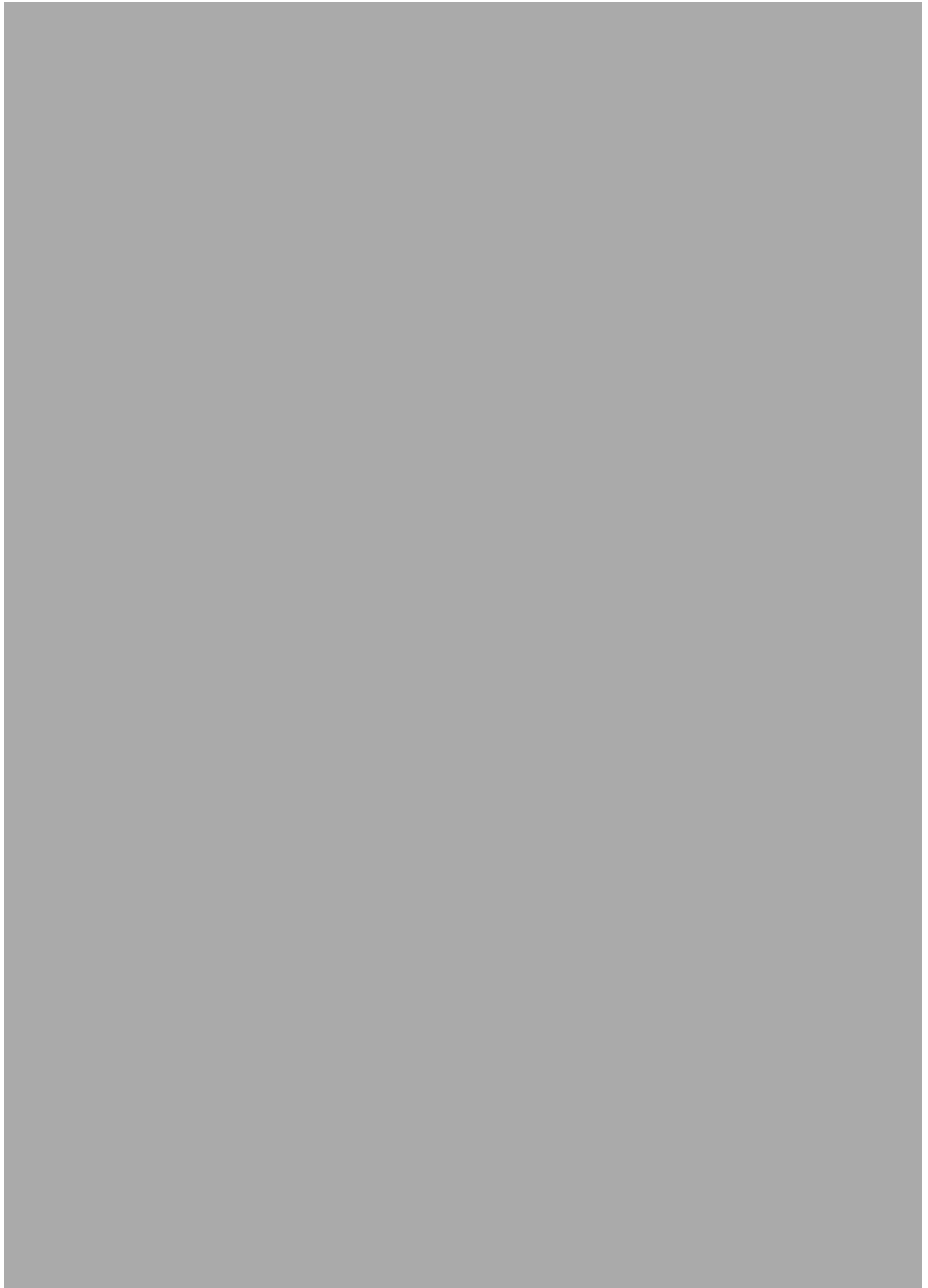
24. Excerpts from statement of Witness E include:





25. Excerpts from statement of Witness F include:





Contraventions supported by Allegation One

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

Allegation Two:

27. It is alleged that between 24 and 28 January 2022 inclusive, you, as nominated supervisor of the Service, failed to ensure that every reasonable precaution was taken to protect children of the Service from harm and any form of hazard likely to cause injury, in that, [REDACTED] was not recorded as having attended the Service, as required by *Regulation 158(1)* and *Regulation 177(2)*, contravening section 167(2) of the *Law*.

Legislative Provision Relevant to Allegation Two:

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, in the case of an individual

Evidence Relevant to Allegation Two

28. Provider email confirms that child, [REDACTED], was enrolled at the Service since 20 December 2021, with attendance records indicating he was not recorded as attending the Service during the week 24-28 January 2022.
29. Excerpts from Witness G's statement include the following:





Contravention supported by Allegation Two

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

Fitness and Propriety as Nominated Supervisor

31. 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.
32. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations. At minimum, fitness and propriety includes honesty, knowledge and ability.
33. 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*.
34. 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.
35. As Nominated Supervisor, you are responsible for the resource and skill requirements of educators in supporting the emotional, developmental, and physiological needs of children including those with challenging behaviours.

36. This evidence raises a concern about your ability to manage and supervise an education and care service.
37. 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 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 and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
- d. Non-statutory action such as a formal caution letter;
 - e. Enforceable undertaking under section 179A of the *Law*; or
 - f. Prohibition from acting in a role as Nominated Supervisor.
39. Relevant legislation for enforceable undertakings and partial prohibition appears below. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
40. 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

- (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.

Right of response

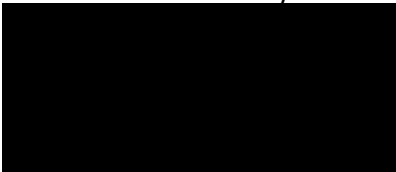
41. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
42. 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. 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

43. 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*.
44. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal. 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.
45. The *Law* applies to you as a nominated supervisor and to any service you are engaged at.
46. 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>.
47. 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>
48. Should you have any questions about this Show Cause Notice please contact Senior Investigator Brian Cropper, on telephone (02) 62071104 or email brian.cropper@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

26 July 2022