



Ms [REDACTED]
Person with Management or Control
The Young Women's Christian Association of Canberra
RE: YWCA Kingsford Smith School Age Care
Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Potential Compliance Action

1. As you may be aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, are investigating suspected offences under the *Education and Care Services National Law (ACT) (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).
2. 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.
3. The Authority has determined that there is sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*. However, the Authority's final determinations will not be made 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.
4. The Authority is considering compliance action based on suspected contraventions of the *Law* and *Regulations*. If substantiated, the allegations may constitute offences under sections 167(1), 174(2)(b) of the *Law* and 177 of the *Regulations*.
5. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required.
6. Where offences under the *Law* and *Regulations* 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. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

7. The evidence obtained during the investigation support offences under the *Law* within the following areas:
 - a) Failure to protect children by taking all reasonable precautions;

- b) Failure to notify the Authority of prescribed information; and
- c) Failure to maintain prescribed records.

Facts

8. 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.
9. 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.
10. 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 and 174 of the *Law*.
11. Information received during the investigation provided reasonable grounds to suspect additional offences under 167 of the *Law* and *Regulation 177*.
12. 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 allegations:

Allegation One

13. It is alleged that between 24 and 28 January 2022 inclusive, the Provider 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(1) of the *Law*.

Allegation Two

14. It is alleged that between 24 and 28 January 2022 inclusive, the Provider 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*, contravening *Regulation 177* and engaging a contravention of section 167(1) of the *Law*.

Allegation Three

15. It is alleged that by 5 February 2022, the approved Provider failed to notify the Regulatory Authority of a complaint that the *Law* had been contravened. In that the Provider received a written letter on 3 February 2022, outlining a complaint alleging that inappropriate and

inadequate strategies were used to support children with challenging behaviours, including a child believed to be [REDACTED], contravening s174(2)(b)(ii) of the *Law*.

Allegation One:

16. It is alleged that between 24 and 28 January 2022 inclusive, the Provider 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(1) of the *Law*.

Legislation relevant to Allegation One.

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

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.

Evidence Relevant to Allegation One.

18. 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]
 - d) Enrolment form for [REDACTED] and Psychologist Assessment Report dated 16/02/2022 for [REDACTED]
 - e) Service Strategic Inclusion Plan.
19. 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] (holiday programs only).

Refer to Attachment A for relevant documents and confirmation email.

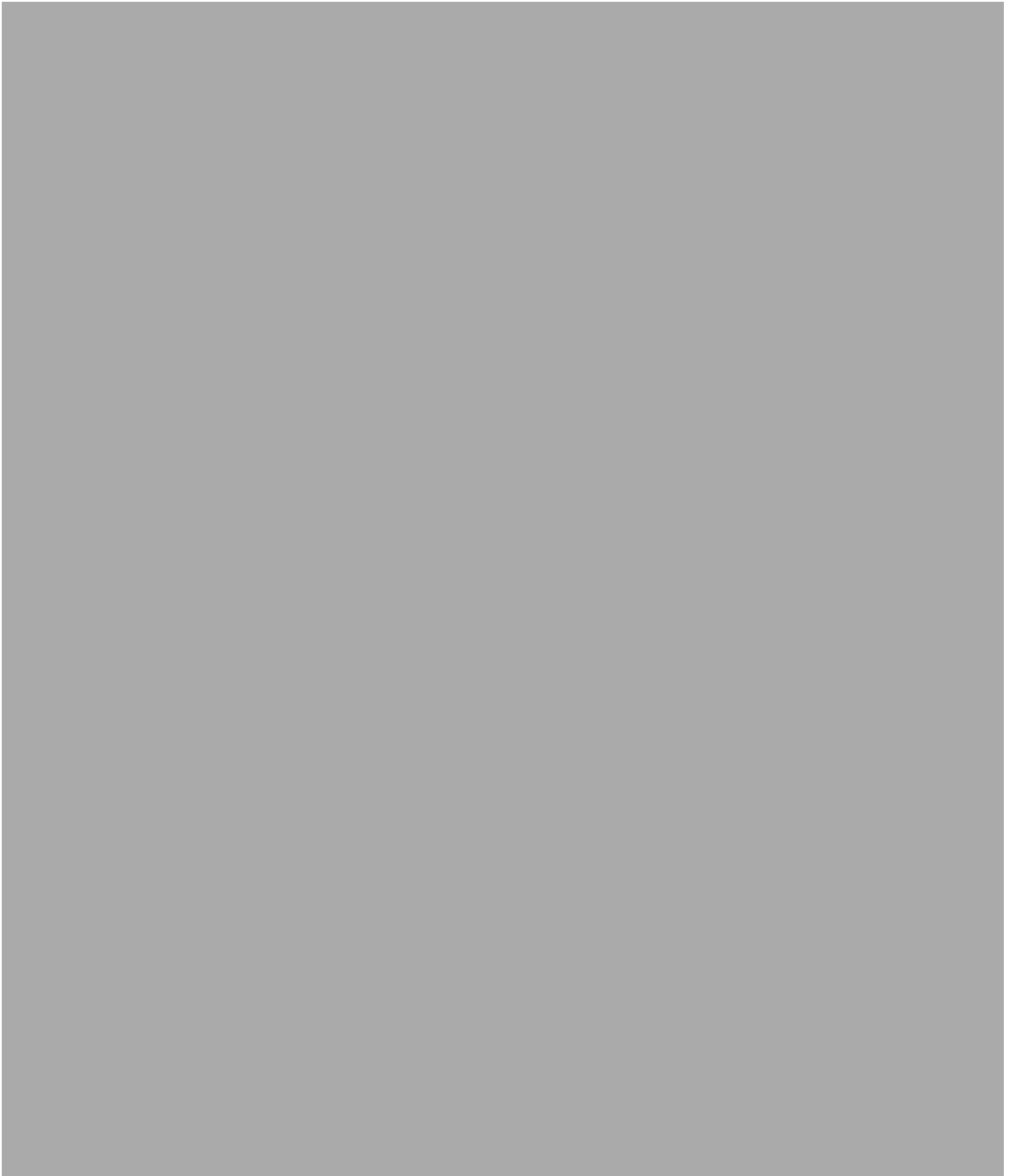
20. The documents appear to support the following:

- a) [REDACTED] records indicate the Provider was aware of his needs at enrolment on 21 April 2021 and included 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, after the holiday program.
- b) [REDACTED] records indicate the Provider was aware of his needs at enrolment inclusive of a Psychologist Assessment. There is no associated Medical Minimisation Plan or strategies to support his needs.
- c) There is no evidence of any plans or strategies to support [REDACTED] behavioural needs while attending the Service.
- d) The Service's Strategic Inclusion Plan is incomplete where related to Vacation Care.

21. During the investigation, the Authority also obtained evidence from witnesses with relevant excerpts appearing below. Due to the specific circumstances of the allegations, it is likely the witnesses can be identified from the content of the excerpts. Please note statements were obtained using powers under section 215 of the *Law*, compelling the witnesses to provide relevant evidence to the Authorised Officers.

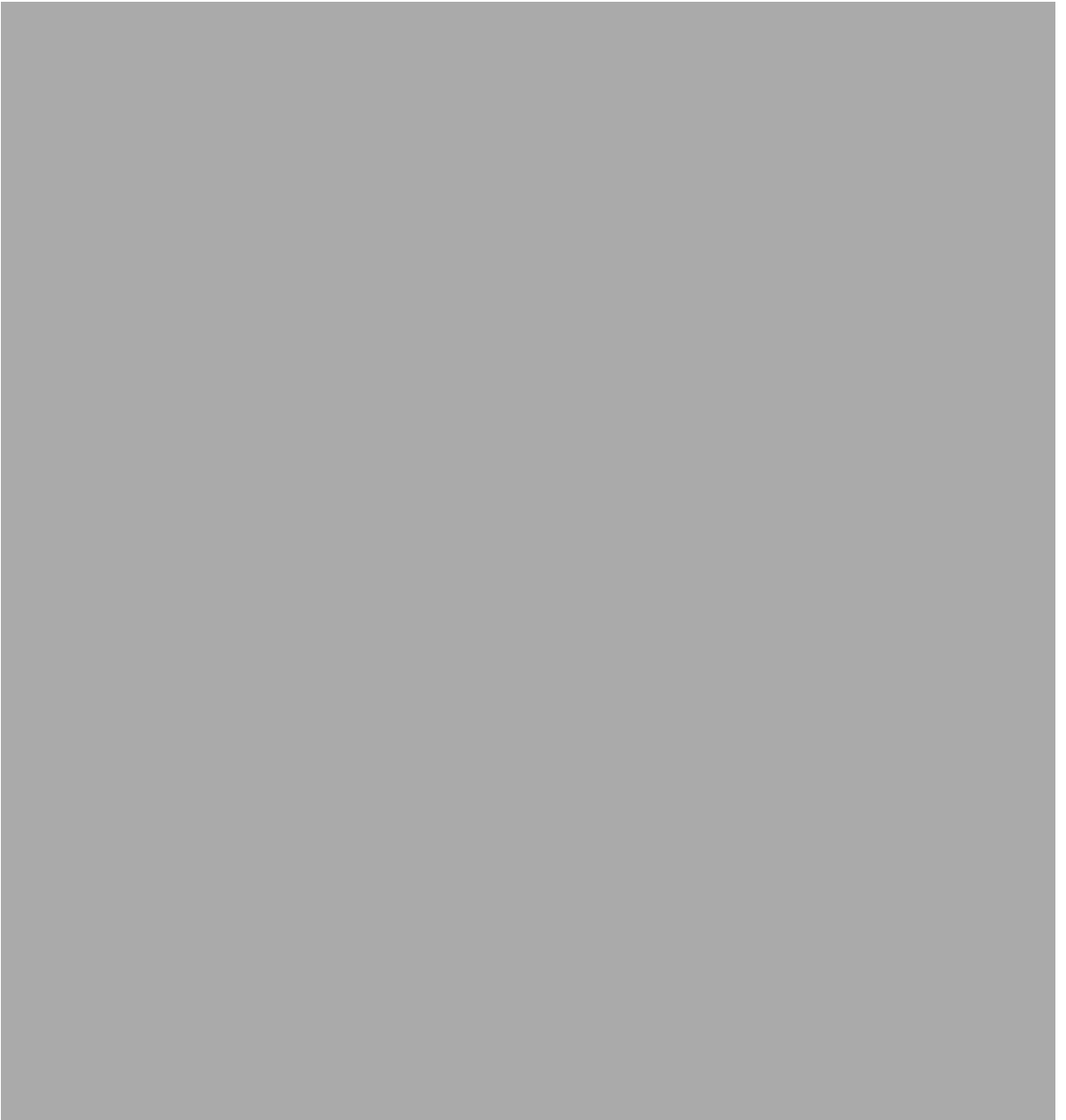
22. Relevant excerpts from statement of Witness A include:





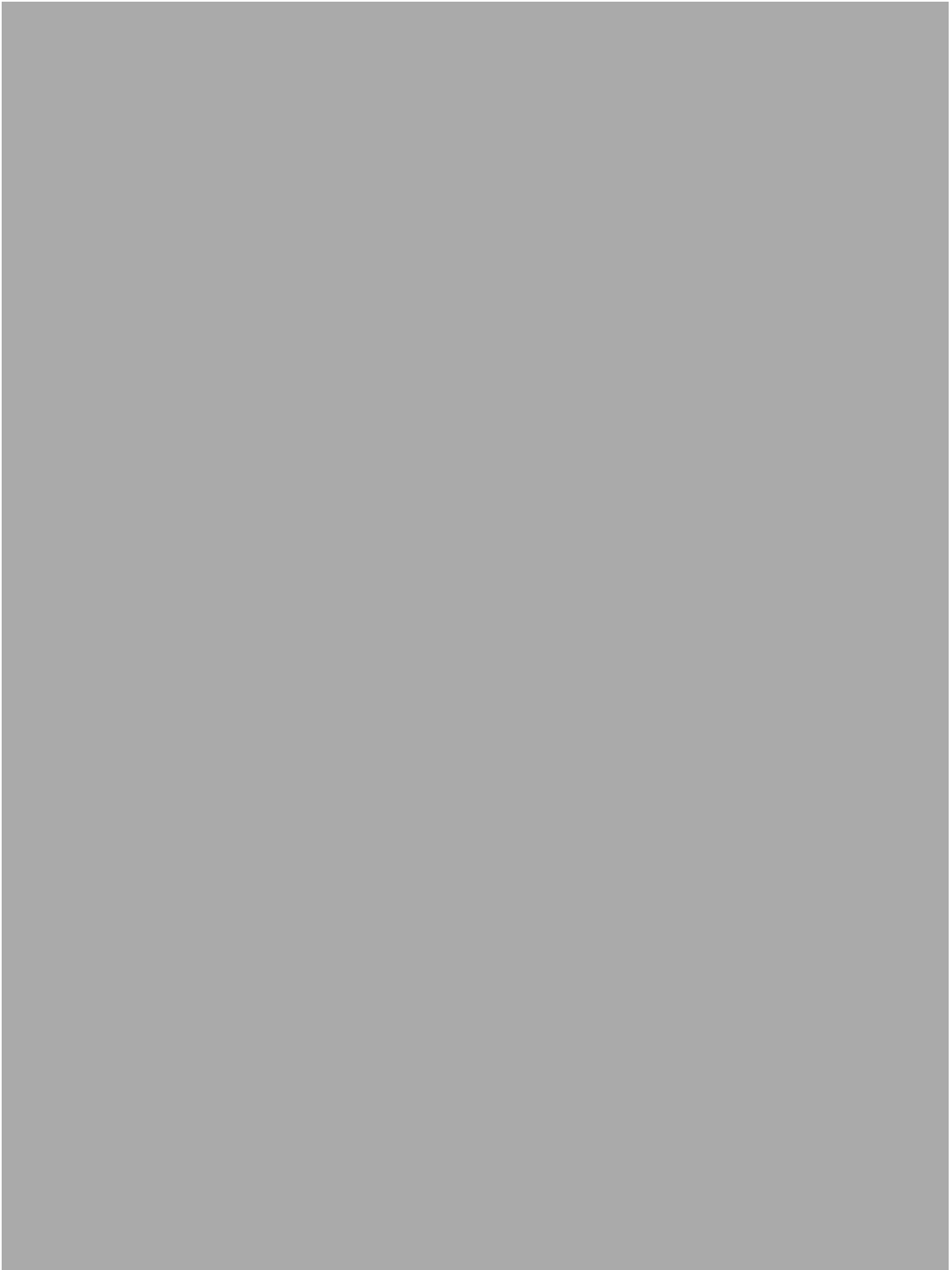
23. Excerpts from statement of Witness B include:





24. Excerpts from statement of Witness C include:





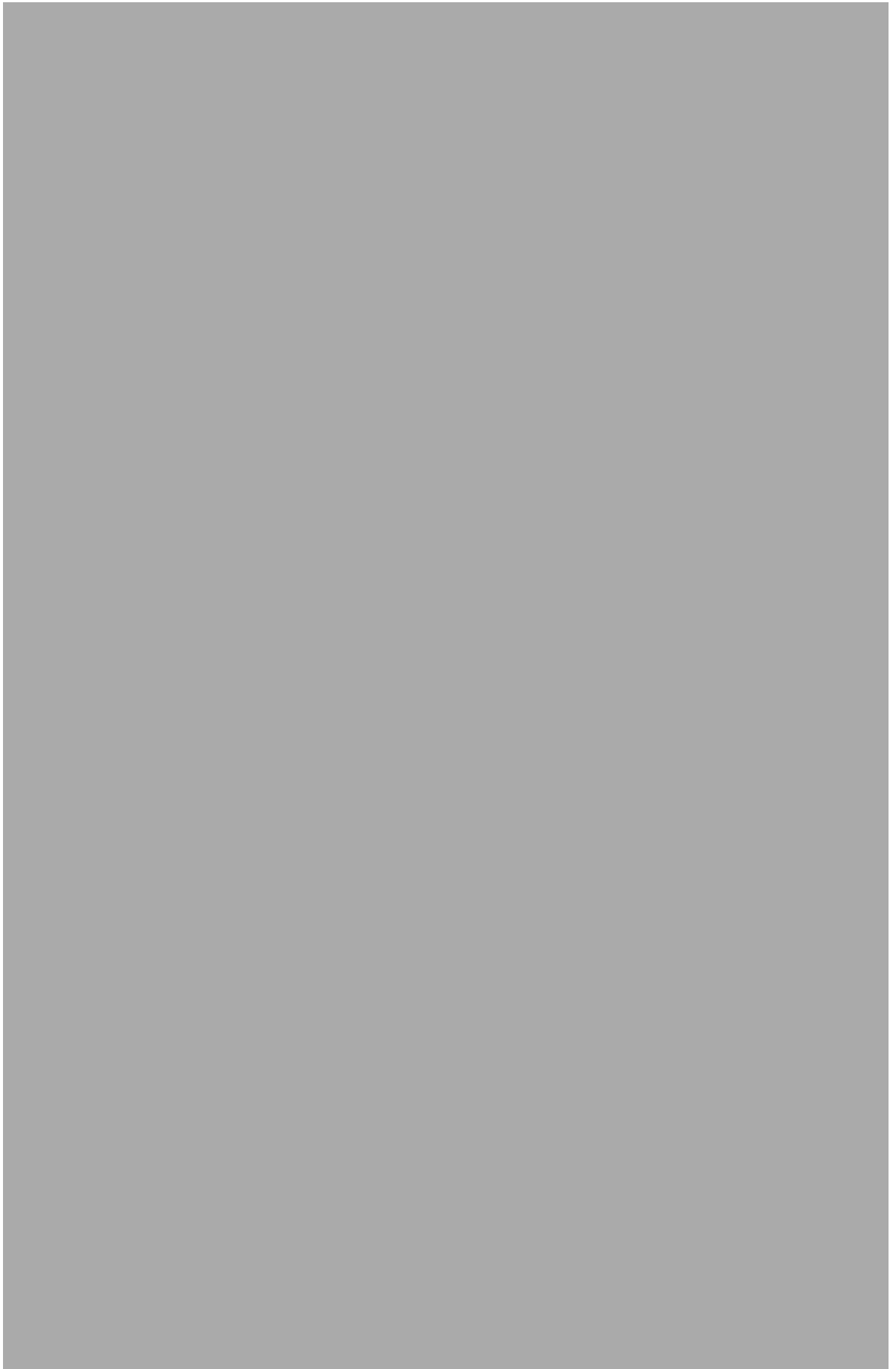
25. Excerpts from statement of Witness D include:





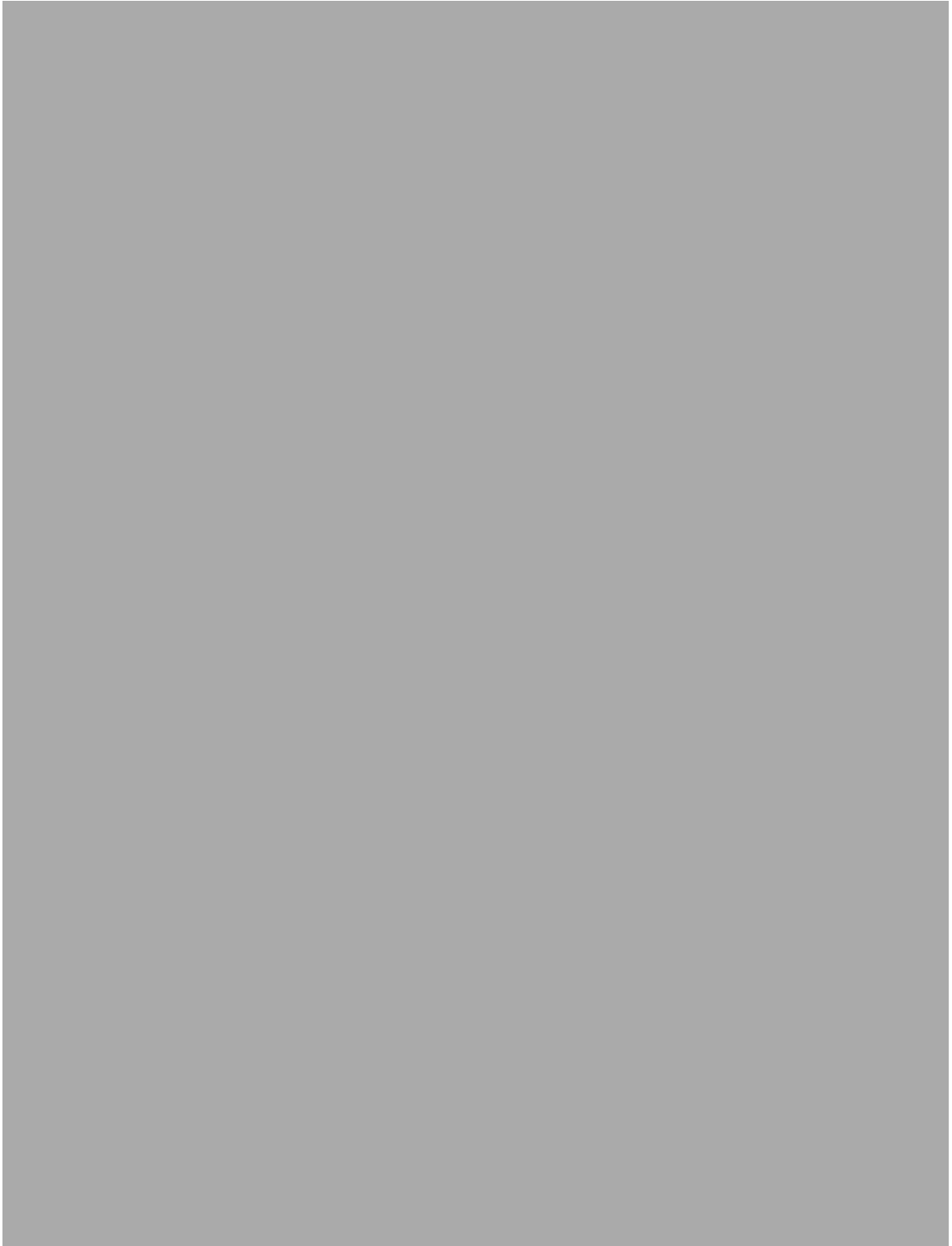
26. Excerpts from statement of Witness E include:







27. Excerpts from statement of Witness F include:





Contraventions supported by Allegation One

28. Evidence gathered appears to support a contravention of section 167(1) of the *Law*.

Allegation Two:

29. It is alleged that between 24 and 28 January 2022 inclusive, the Provider 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*, contravening *Regulation 177* and engaging a contravention of section 167(1) of the *Law*.

Legislation relevant to Allegation Two.

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

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 158 – Children’s attendance record to be kept by approved provider

- (1) The approved provider of an education and care service must ensure that a record of attendance is kept for the service that-
- (a) Records the full name of each child attending the Service; and
 - (b) Records the date and time each child arrives and departs; and
 - (c) Is signed by one of the following persons at the time that the child arrives and departs-
 - i. the person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
 - ii. A nominated supervisor.

Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider-

(1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –

(k) A children’s attendance records as set out in regulations 158;

(2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.

Penalty: \$2000

Evidence Relevant to Allegation Two

31. Provider emails confirms that child, [REDACTED], was enrolled at the Service since 20 December 2021, Vacation Care Only, with attendance records indicating that he was not recorded as attending the Service during the week 24-28 January 2022.
32. Witness evidence indicates attendance of the [REDACTED], at the Service with relevant excerpts from Witness G’s statement including:





Contravention supported by Allegation Two

33. Evidence gathered appears to support contraventions of *Regulations* 158(1) and 177(1)(k) engaging a further contravention of 167(1) of the *Law*.

Allegation Three:

34. It is alleged that by 5 February 2022, the approved Provider failed to notify the Regulatory Authority of a complaint that the *Law* had been contravened, in that the Provider received a written letter on 3 February 2022, outlining a complaint alleging that inappropriate and inadequate strategies were used to support children with challenging behaviours, including a child believed to be [REDACTED] contravening s174(2)(b)(ii) of the *Law*.

Legislation relevant to Allegation Three

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

Section 174 of *Law* - Offence to fail to notify certain information to Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—
- (a) any serious incident at the approved education and care service;
 - (b) any complaints alleging—
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service;
 - or (ii) that this *Law* has been contravened;
 - (c) information in respect of any other prescribed matters.

Penalty: \$4 000, in the case of an individual
\$20 000, in any other case.

Regulation 176 – Time to notify certain information to Regulatory Authority

- (2) For the purpose of section 174(4) of the *Law*, a notice must be provided:

- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident;
- (c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

Evidence Relevant to Allegation Three

36. Excerpts from Witness A's statement include the following:



37. Documents furnished by the Provider pursuant to a 215 Notice include an email dated 3 February 2022, where the Provider follows up on an earlier request for documentation from the complainant, who responds with a return email and attached a written complaint alleging risks to children arising from inadequate strategies and isolation techniques used in guiding challenging behaviours. Refer to Attachment B for email and complaint.
38. Furthermore, the Provider also furnished a report of an investigation conducted into the allegations raised by the complainant which includes the following:

Although rostered for 28 January 2022, ██████ didn't go to work that day. In an informal catch up with her and ██████ (SAC and Pedagogical Manager) on 31 January 2022, ██████ was advised to submit any concerns to her managers

Refer to Attachment C for Provider's Investigation Report.

39. A review of the ACECQA NQA ITS indicates the Provider has failed to notify the Regulatory Authority of the complaint. Refer to Attachment D.

Contravention supported by Allegation Three

40. Evidence gathered appears to support a contravention of section 174 (2)(b) of the *Law*.

Potential Compliance Action

41. 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 Administration Action (similar to a caution) with no further action;
 - b) Non-statutory Administrative Action with measures to be taken and evidence produced;
 - c) A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
 - d) Conditions on Service Approval under section 55 of the *Law*.
42. 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.
43. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified as a result of the investigation.
44. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process. Alternatively (or additionally), the Authority may place a condition on the Service Approval to address the specific non-compliance identified as a result of the investigation.

Right of response

45. As mentioned previously, this letter is your 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.
46. 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 brian.cropper@act.gov.au or by post to:

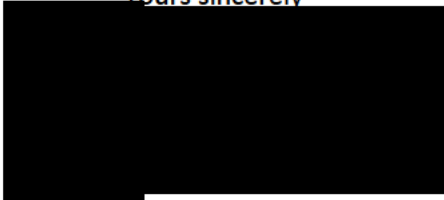
Children's Education and Care Assurance -
Attention Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

47. 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*.
48. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.

49. 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.
50. 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>.
51. 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>
52. 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