



██████████
Nominated Supervisor
Wonderschool (Dickson)
Email: ██████████@outlook.com

Dear Ms ██████████

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 currently investigating suspected offences regarding the operation of Wonderschool (Dickson) Pty Limited SE-40019814 (the Service), operated by Wonderschool (Dickson) Pty Limited PR-40023355 (the Provider). The Authority’s records indicate that you were the nominated supervisor at the relevant time.
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 165, 167 or 169 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.
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*.

Background

8. On 26 July 2022, the Authority received a direct complaint relating to staffing and inadequate supervision at the Service on the 5 and 6 July 2022, where an educator was with numbers of children outside of prescribed ratio.
9. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at Service, and a decision was made to investigate suspected offences under section 165, 167 and 169 of the *Law*.
10. Information received during the investigation provided reasonable grounds to suspect additional breaches under 177 of the *Regulations*, relating to the accuracy of Child Attendance and Working Directly with Children records.

First set of grounds –Staffing arrangements, supervision, and protection of children from harms and hazards

Allegation One

11. It is alleged that between June 2022 and July 2022, you, as the nominated supervisor of the Service, failed to ensure adequate staffing arrangements were in place to support adequate supervision of children at all times that education and care was being provided at the Service, in contravention of sections 165(2) and 169(3) of the *Law*.

Allegation Two

12. It is alleged that between June and July 2022, you, as the nominated supervisor of the Service, by not ensuring adequate staffing arrangements and supervision were in place, failed to ensure reasonable steps were taken to protect children from harms and hazards likely to cause injury or illness, in contravention of section 167(2) of the *Law*.

Legislation Relevant to Allegation One and Two

13. The following provisions of the *Law* and *Regulations* 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

Section 169(3) of the Law - Offence relating to staffing arrangements

An Approved Provider of an education and care service must ensure that, whenever children are being educated and cared for by a service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000

Regulation 13 – Meaning of working directly with children

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

Regulation 122 –Educators must be working directly with children to be included in ratios

An educator cannot be included in calculating the educator to child ratio of a centre- based service unless the educator is working directly with children at the service.

Regulation 123 (1) and (2) –Educator to child ratio-centre – based service

(1) The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios—

- (a) for children from birth to 24 months of age—1 educator to 4 children;
- (a) for children over 24 months and less than 36 months of age—1 educator to 5 children;
- (b) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;
- (c) for children over preschool age, 1 educator to 15 children.

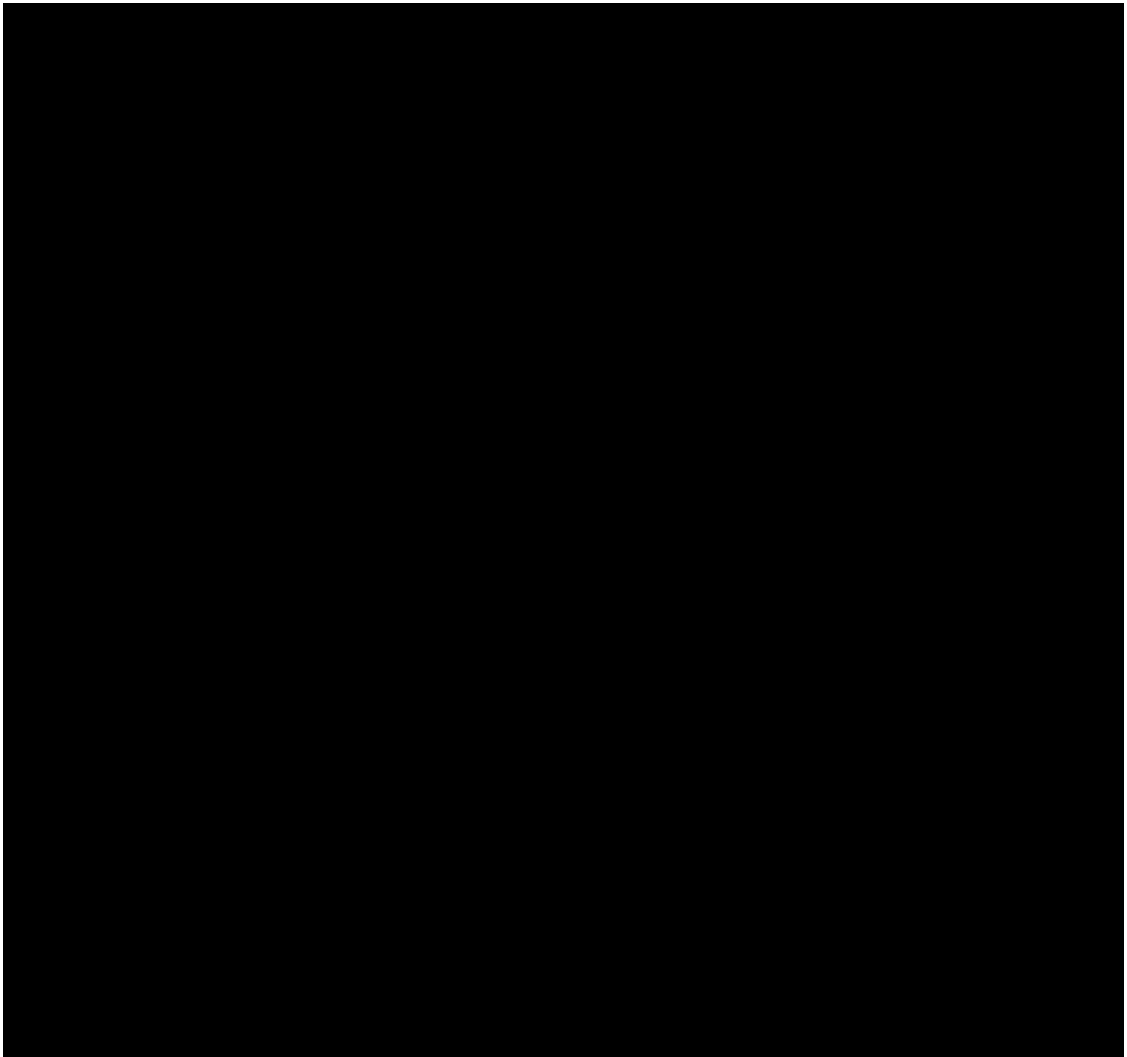
(2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

Evidence Relevant to Allegation One and Two

- 14. Documentation obtained from the Provider during the investigation include the following:
 - a. Working Directly with Children records (WDWC) for 5 and 6 July 2022; and
 - b. Child attendance records for 5 and 6 July 2022.
- 15. Authority records indicate that you are the current Nominated Supervisor having commenced in that role on 30 May 2022. Refer to Attachment A.
- 16. Ratio analysis was carried out for those dates utilising those records and do not indicate any contravention of educator to child prescribed ratio. Refer Attachment B.
- 17. During the investigation, the Authority obtained numerous witness statements, relevant extracts from which appear below, with personal information redacted where appropriate.

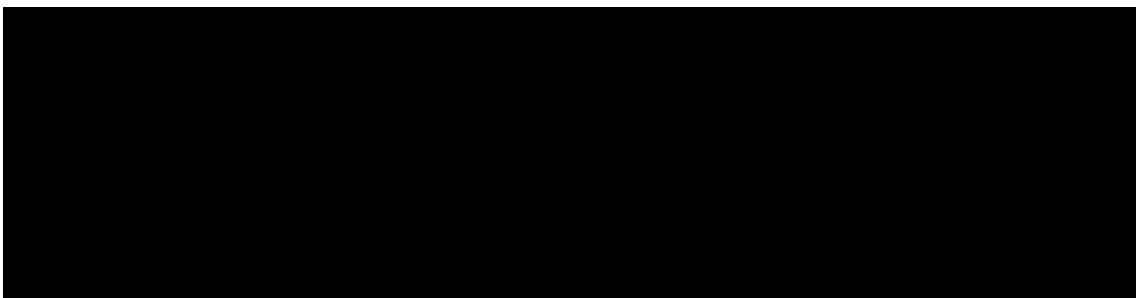
Please note that most witness statements were obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.

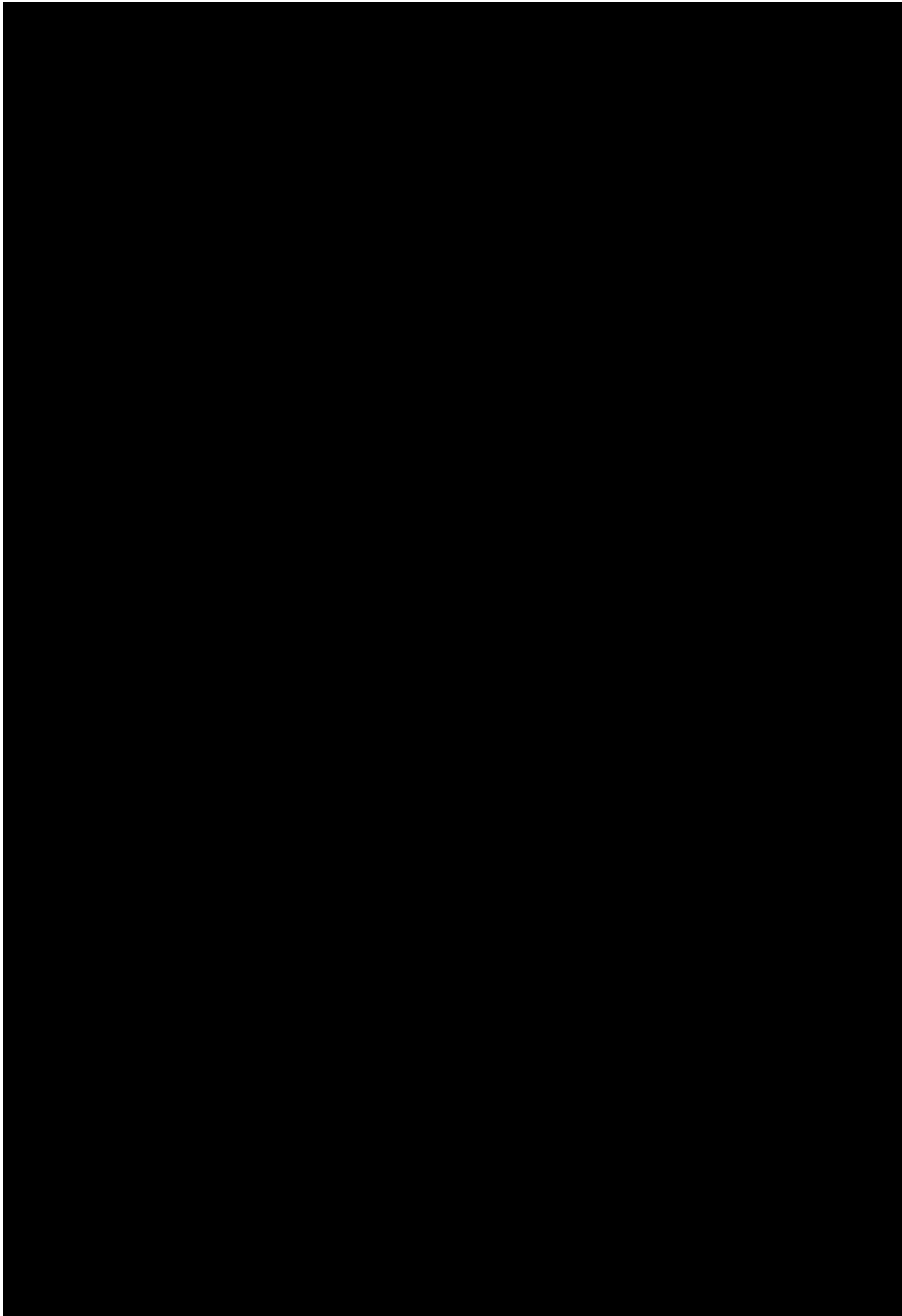
18. Relevant extract from Witness One for the 5 July 2022 include:



19. Child Attendance records for 5 July 2022 furnished by the Provider indicate children entered the Service between 8am to 8.15pm. Records indicate that child [REDACTED] entered the service at 8.58am with [REDACTED] and [REDACTED] families entering at 8.59pm. Refer to Attachment C.

20. Relevant extracts from Witness One for the 6 July 2022 include:

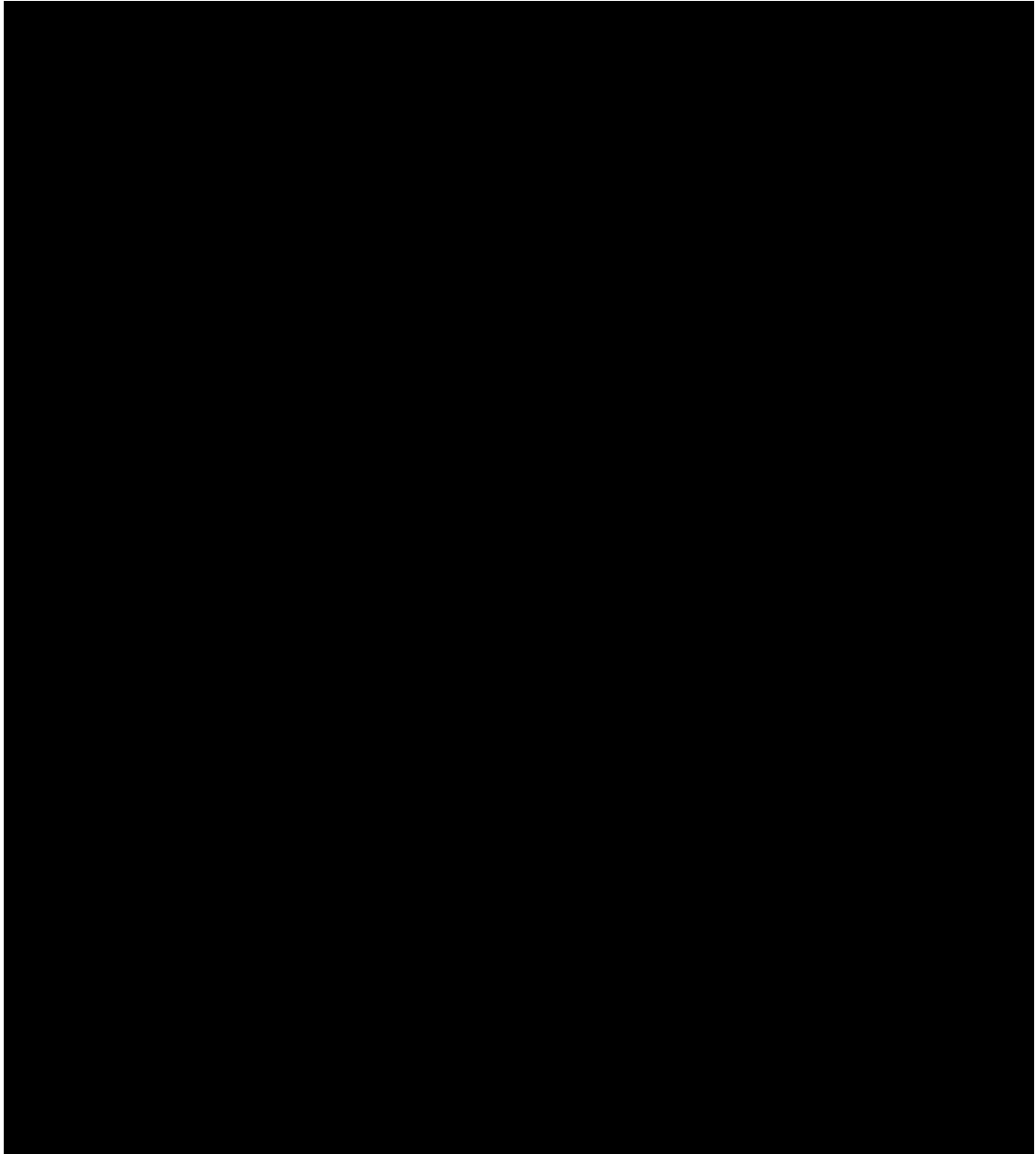




21. WDWC records for 6 July 2022, indicate that you were signed into the Nursery Room 2 between 7.30am and 11.09am. An SMS between Witness One and you, suggests you were not present at the Service as recorded on that date. Refer to [Attachment D](#) for WDWC record 6 July 2022 and SMS message.

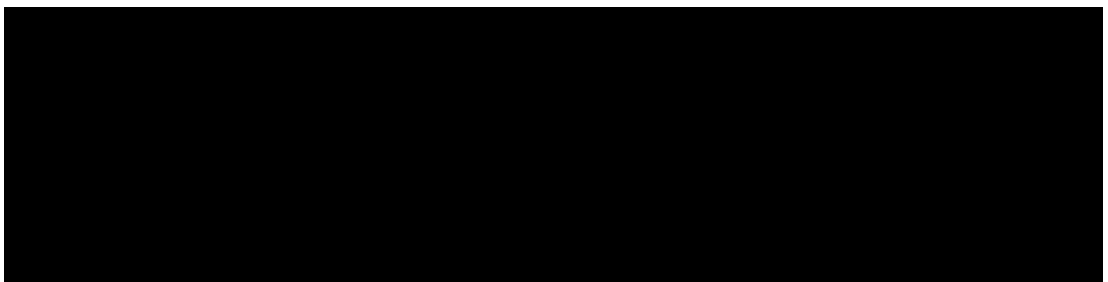
22. Witness One provides a copy of a message you forwarded to educators, outlining that you alone were supervising 17 Toddlers until 8.30am and not advising parents of being the only educator. Refer Attachment E.

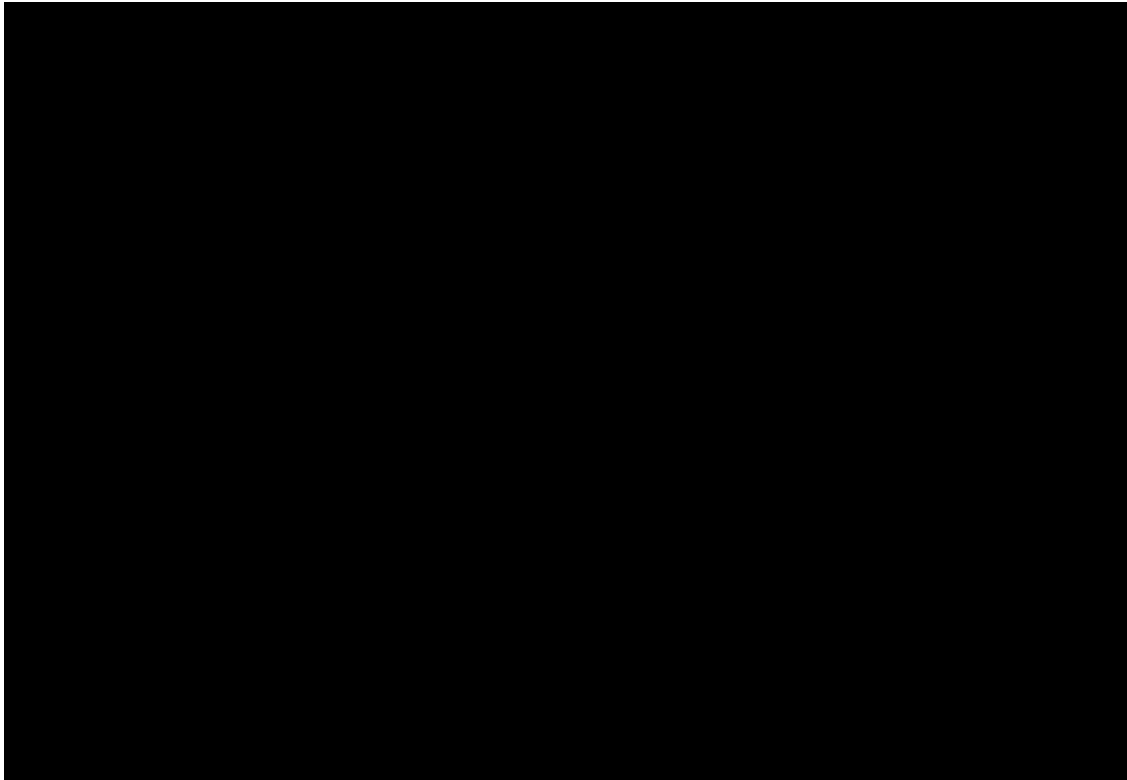
23. Relevant extract from Witness Two include:



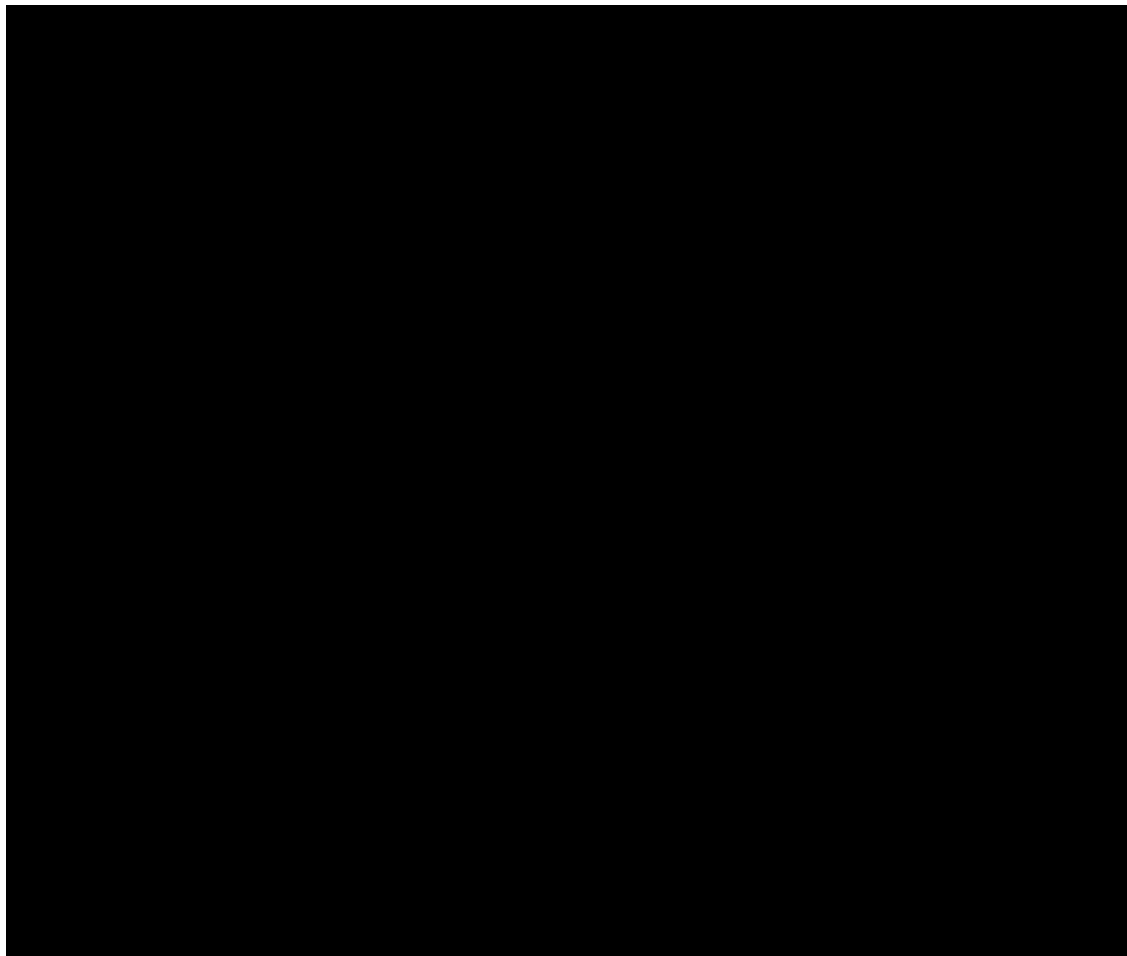
Refer copy of message indicated as viewed in extract at Attachment D.

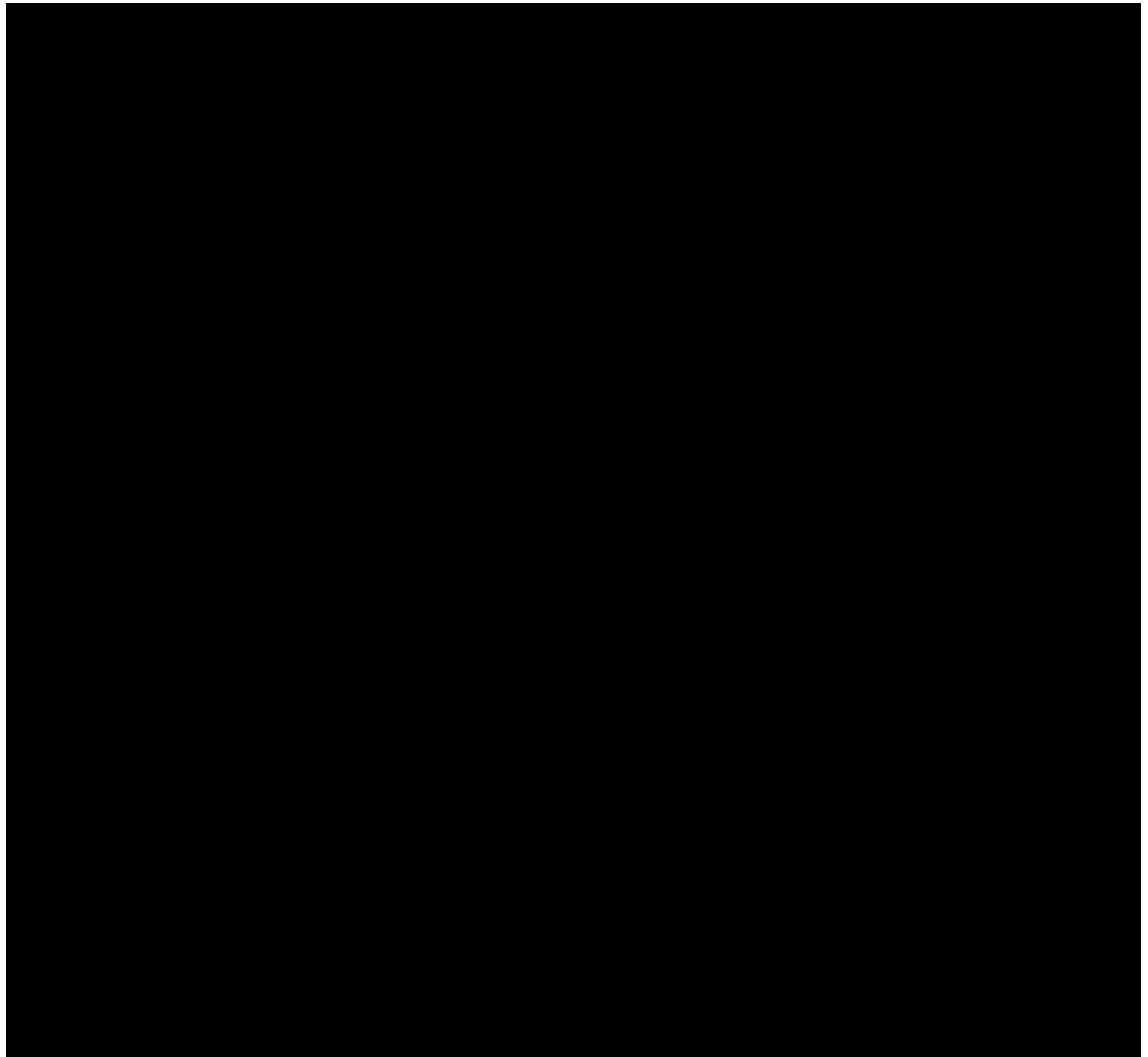
24. Relevant extract from Witness Three include:





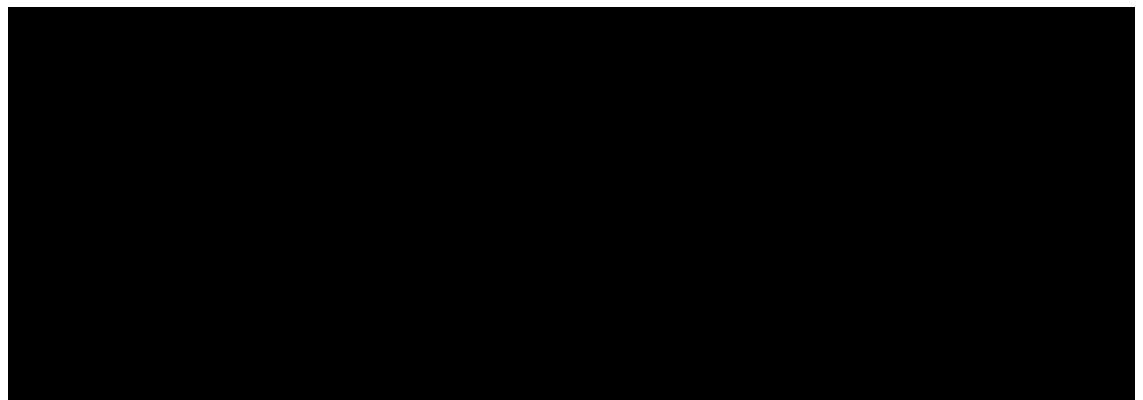
25. Relevant extract from Witness Four include:



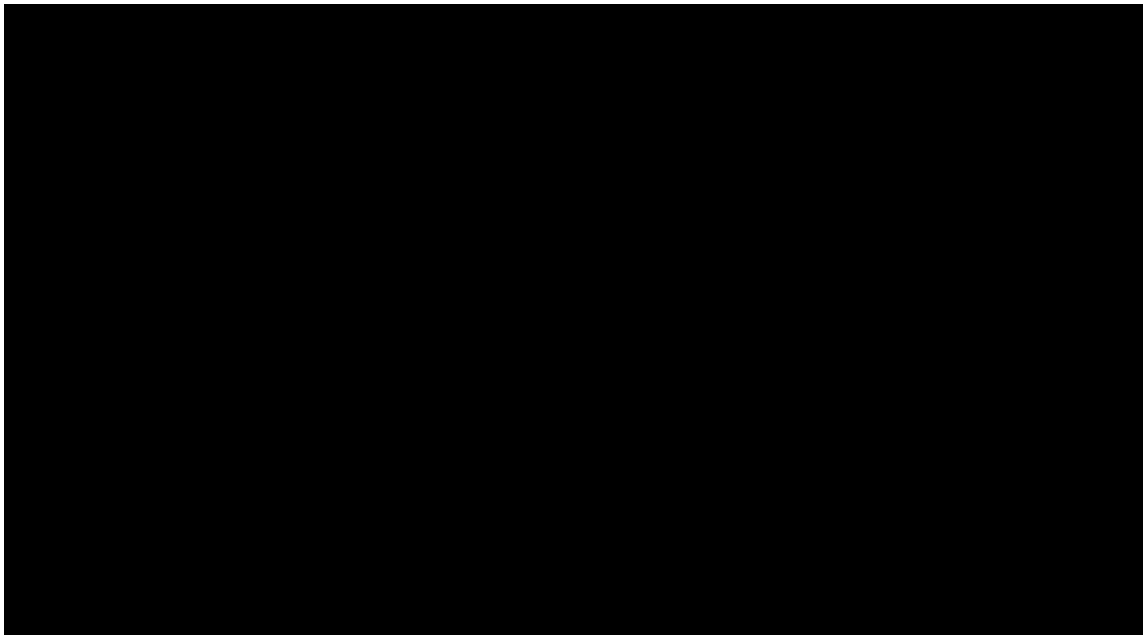


26. Evidence of Witness Four support the allegation that prescribed ratios were not met during June 2022 and suggest a strategy of delaying the accurate recording of children entering the service to appear within ratio.

27. Relevant excerpts from Witness Five include:



28. Relevant excerpts from Witness Six include:



Refer copy of message indicated as viewed in extract at Attachment E

Contraventions supported by Allegation One and Two

29. Evidence gathered appears to support contraventions of section 169(3) of the *Law*, engaging further contraventions of sections 165(2) and 167(2) of the *Law*.

Fitness and Propriety as Nominated Supervisor

30. 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.
31. 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.
32. 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*. 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.

34. During the course of the investigation, evidence gathered included documentation supporting the suspected offences of failing to adequately supervise all children at all times, and in particular, a message from you to staff, condoning risks to children from ratio failings and, concerningly, suggesting that parents not be informed.
35. This evidence raises a concern about your ability to manage and supervise an education and care service.
36. 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

37. 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:
 - 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.
38. Relevant legislation for enforceable undertakings and partial prohibition appears below.
39. 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 F 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.
45. 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.
46. The *Law* applies to you as a nominated supervisor and to any service you are engaged 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>.
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 email brian.cropper@act.gov.au.

Yours sincerely



Jo Williams
Director Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

30 January 2023