



[REDACTED]
Nominated Supervisor
Wonderschool Conder

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 currently investigating multiple suspected offences at Wonderschool Conder SE-40018302 (the Service), operated by Wonderschool (Conder) Pty Ltd PR-40022037 (the Provider). The Authority’s records indicate that you were the nominated supervisor at the relevant time, having commenced in that role on 2 March 2020.
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) and the Authority has determined that you as Nominated Supervisor have a case to answer regarding suspected offences. 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 or 167 of the *Law* (or any combination of them). If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
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 to Investigation

8. On 18 November 2021, the Provider notified the Authority that, at approximately 15:30 on 17 November 2021, an educator disclosed that two children (aged 4.5, and (age unknown but enrolled in Junior Preschool) had been discovered by an educator under the pier/jetty, having engaged in inappropriate physical contact. The Authority sought additional information from the Provider, which was uploaded to NQAITS.
Refer Attachment A for all documentation relevant to the notification.
9. On 23 November 2021, the Provider notified the Authority that, on 22 November 2021, two children (aged 4.5 and (aged 5.5) were unaccounted for during a period of approximately 20 minutes, noticed missing upon the arrival of (parent to collect her, and found inside the Preschool storeroom. Refer Attachment B for all documentation relevant to the initial notification, absent CCTV footage due to size, which can be produced on request.
10. It was determined by the Authority that there were reasonable grounds to suspect that offences had, or may have, occurred at the Service, and a decision was made to investigate suspected offences under sections 165 and 167.
11. Information received during the investigation provided reasonable grounds to suspect additional offences under sections 165 and 167 of the *Law*.

Allegation One – Sections 165 and 167.

12. It is alleged that, on 17 November 2021, you as Nominated Supervisor of the Service failed to ensure adequate supervision of all children being educated and cared for in that, for an unknown time leading up to approximately 15:00, (and (engaged in inappropriate physical contact under a jetty unnoticed by educators, in contravention of section 165(2) of the *Law*, engaging a further contravention of section 167(2) of the *Law*.

Legislation Relevant to Allegations One, Two, Three and Four

13. The following provisions of the *Law* and *Regulations* are relevant to Allegations One, Two, Three and Four:

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

14. Records from the National Quality Authority ITS database indicate that you were the nominated supervisor at the time, having commenced in that role on 2 March 2020.
15. On 3 December 2021, the Provider was advised of the investigation and a notice for production of documents, allowable under section 215 of the *Law*, was issued.
16. Records produced by the Provider indicated that:
 - a. the Service was educating and caring for children on 17 November 2021;
 - b. [REDACTED] (Junior Preschool) was in attendance from 8:55 to 17:28; and
 - c. [REDACTED] (Junior Preschool) was in attendance from 8:48 to 15:31;
 - d. Junior Preschool Educators working directly with children at the time of the incident were [REDACTED] and [REDACTED]
17. Utilising working directly with children records and children's attendance records, ratio analysis was carried out, indicating that the Service appeared adequately staffed around the time of the incident. Refer Attachment C for Ratio Analysis 17 November 2021.
18. During the investigation, the Authority obtained numerous witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence. Please note that all witness statements were obtained utilising powers under section 215 of the Law, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.
19. Relevant extracts from Witness A's statement are:

a.

b.

c.

d.

e.

f.

g.

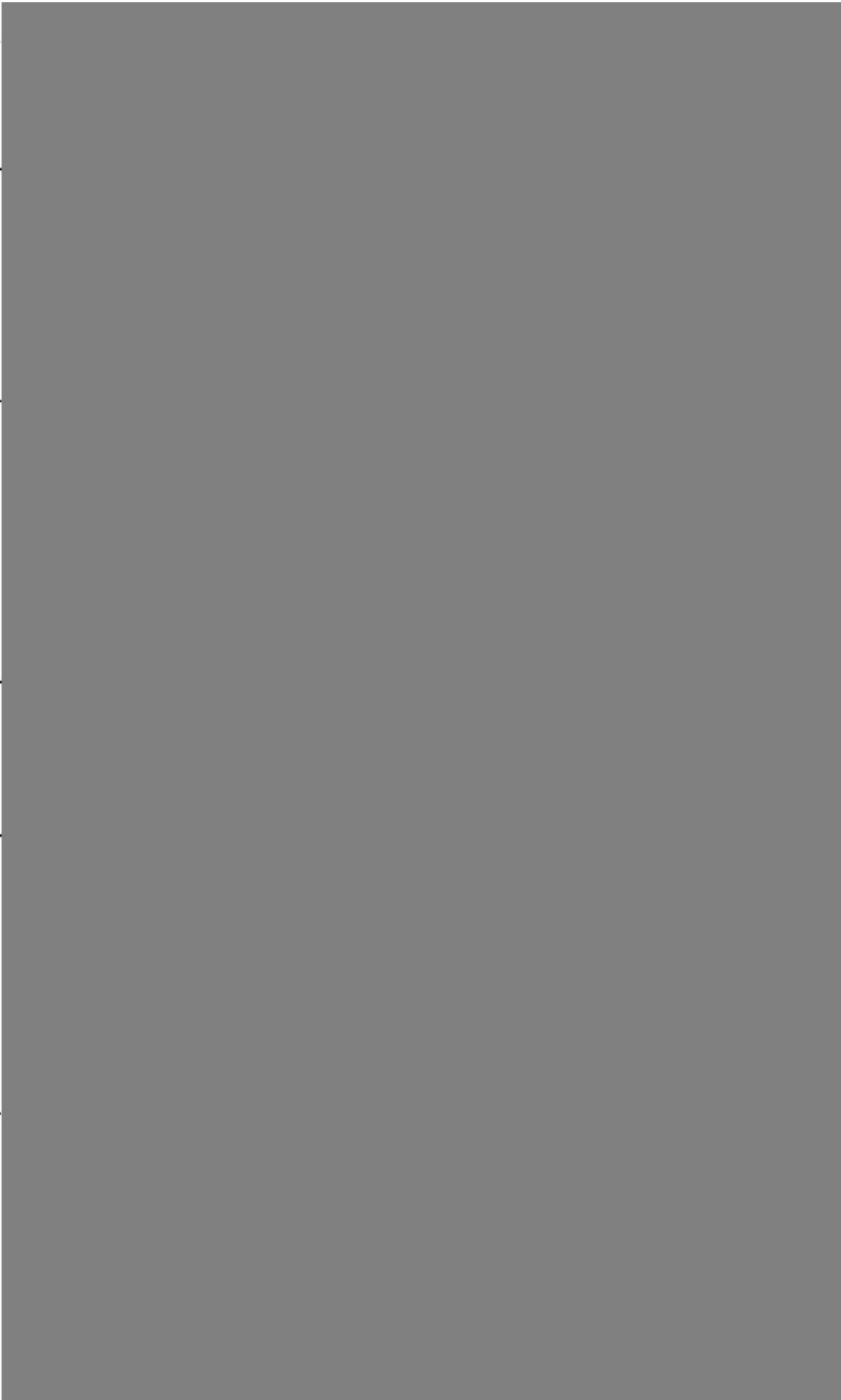
h.

i.

j.

k.

l.



m.

n.

o.



20. Relevant extracts from Witness B's statement are:

a.

b.

c.

d.

e.

f.



g.

h.

21. Relevant extracts from Witness C's statement are:

a.

b.

c.

d.

e.

22. Relevant extracts from Witness D's statement are:

a.

b.



23. Information disclosed by [redacted] indicates that the children may have been unsupervised under the jetty/pier for a significant period of time in order for the disclosed activities to have taken place.
24. The Authority's view is that adequate supervision is a reasonable precaution to take to protect children from harm and from hazards likely to cause injury. Accordingly, a contravention of section 165(2) results in automatic substantiation of an offence under section 167(2) of the *Law*.

Allegation Two– Sections 165, 167 of the *Law*

25. It is alleged that, on 22 November 2021, from approximately 16:27 to 17:16, you as Nominated Supervisor of the Service failed to ensure adequate supervision of all children being educated and cared for in that:
 - a. [redacted] and [redacted] were unaccounted for during approximately four minutes from 16:27 to 16:31 (**First Instance**); and
 - b. [redacted] and [redacted] were unaccounted for during a period of approximately 45 minutes from 16:31 to 17:16, with no attempt to locate them until the arrival of [redacted] parent, and located alone in a preschool storeroom (**Second Instance**);

in contravention of section 165(2) of the *Law*, engaging a further contravention of section 167(2) of the *Law*.

Evidence Relevant to Allegation Two

26. Records produced by the Provider indicated that:
 - a. the Service was educating and caring for children on 22 November 2021;
 - b. [redacted] (Preschool) was in attendance from 10:55 to 16:38;
 - c. [redacted] (Junior Preschool) was in attendance from 8:47 to 17:32; and
 - d. [redacted] (Preschool) was in attendance from 7:56 to 17:16 (it is noted that she was signed out at 17:01, at the time her parent arrived at the Service).
27. Utilising working directly with children records and children's attendance records, ratio analysis was carried out, indicating that the Service appeared adequately staffed at the time, on an "under the roof" basis. Educator [redacted] is not included in the ratio analysis, due to information submitted by the Provider that she was undertaking cleaning duties at the time. Refer Attachment D for Ratio Analysis 22 November 2021.

28. The Provider submitted its investigation into the incident, inclusive of brief educator statements. Refer Attachment E for final outcome, including steps to be taken in response.
29. A chronology was prepared by the Authority, noting the time stamps were incorrect on the CCTV footage, as advised by the Provider (see Attachment E). Refer Attachment F for chronology.
30. Working directly with children records and children's attendance records indicate that there was no assigned educator for the Preschool room after 4:30pm (with up to 8 children), and one educator working directly with children for Junior Preschool room (up to 15 children).
31. Witness evidence indicates numerous factors as potentially contributing to the incident, being:
 - a. The gate between nursery yard and the big yard;
 - b. Lack of communication to educators regarding collection;
 - c. Lack of room-assigned educators;
 - d. Lack of head counts;
 - e. Cleaning duties;
 - f. Supervision plan.

Factor A - Gate

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

a.



33. Relevant extracts from Witness B's statement are:

a.



34. Relevant extracts from Witness C's statement are:

a.





35. Relevant extracts from Witness D's statement are:

a.



Factor B– Lack of communication to educators regarding collection processes

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

a.



37. Relevant extracts from Witness C's statement are:

a.

b.

c.



38. Relevant extracts from Witness D's statement are:

a.

b.



c.

d.

e.

Factor C - Lack of room-assigned educators

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

a.

b.

40. Relevant extracts from Witness B's statement are:

a.

41. Relevant extracts from Witness C's statement are:

a.

b.

c.

d.

42. Relevant extracts from Witness D's statement are:

a.

b.

c.

d.

e.

f.

Factor D – Lack of head counts

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

a.

b.

44. Relevant extracts from Witness B's statement are:

a.



45. Relevant extracts from Witness C's statement are:

a.



46. Relevant extracts from Witness D's statement are:

a.

b.

c.



Factor E – Cleaning Duties

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

a.

b.

c.



48. Relevant extracts from Witness B's statement are:

a.



49. Relevant extracts from Witness C's statement are:

a.



50. Relevant extracts from Witness D's statement are:

a.

b.

c.



Factor F – Supervision Plan

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

a.

b.

c.



52. Relevant extracts from Witness C's statement are:

a.

b.



53. Relevant extracts from Witness D's statement are:

a.



b.

c.

d.

e.

Contraventions Supported by Allegation Two

54. Evidence gathered appears to support contraventions of sections 165(1) and 167(1) of the *Law*.

Allegation Three– Sections 165, 167 of the *Law*

55. It is alleged that, in the late morning on an unknown date (possibly 13 December 2021), you as Nominated Supervisor of the Service failed to ensure adequate supervision of all children being educated and cared for in that, [REDACTED] and [REDACTED] left the Service through a gate in the big yard and were located outside by an educator, in contravention of section 165(2) of the *Law*, engaging a further contravention of section 167(2) of the *Law*.

Evidence Relevant to Allegation Three

56. Relevant extracts from Witness D’s statement are:

a.

b.

c.

d.

e.

f.

57. Prior to the interview with Witness D, the Authority was unaware of this alleged incident, and a supplementary notice, allowable under section 215 of the *Law*, was issued to the Provider on 5 February 2022 to obtain relevant evidence.
58. The Provider notified the incident as required under the *Law*, and carried out an investigation, which was submitted on 25 February 2022. Refer Attachment G for a copy of relevant documentation. It is noted that not all details could be established.

Contraventions Supported by Allegation Three

59. Evidence gathered appears to support contraventions of sections 165(1) and 167(1) of the *Law*.

Allegation Four– Sections 165, 167 of the *Law*

60. It is alleged that, at approximately lunch time on 22 November 2021, you as Nominated Supervisor of the Service failed to ensure adequate supervision of all children being educated and cared for in that [redacted] and [redacted] were unsupervised in the bathroom, engaging in inappropriate physical contact, after which [redacted] was located unsupervised in the hallway outside the kitchen, in contravention of section 165(1) of the *Law*, engaging a further contravention of section 167(1) of the *Law*.

Evidence Relevant to Allegation Four

61. Records submitted by the Provider under notice indicated that:
 - a. [redacted] Junior Preschool) was being educated and cared for by the Service on 22 November 2021 from 7:56 to 17:01;
 - b. [redacted] Junior Preschool) was being educated and cared for by the Service on 22 November 2021 from 8:47 to 17:32.

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

- a.
- b.
- c.
- d.



e.

f.

63. Relevant extracts from Witness D's statement are:

a.

b.

c.

d.

e.

f.

g.

h.

i.

j.

k.

i.

Contraventions Supported by Allegation Four

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

Fitness and Propriety as Nominated Supervisor

65. 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.
66. 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.
67. At minimum, fitness and propriety includes honesty, knowledge and ability.
68. 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.
69. During the course of the investigation, evidence gathered indicated multiple instances of insufficient supervision of children being educated and cared for by the Service, appearing to be contributed to by numerous factors.
70. This evidence raises a concern about your ability to manage and supervise an education and care service.
71. 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

72. 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.
73. Relevant legislation for enforceable undertakings and partial prohibition appears below. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, or advising the Authority of any proposed change in employment. 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

74. 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.
75. At Attachment H 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 Tanya.Masterman@act.gov.au or by post to

Children's Education and Care Assurance
Attention Tanya Masterman
GPO Box 158
Canberra ACT 2601.

Caution

76. 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*.
77. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
78. 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.
79. 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>.
80. 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>

81. Should you have any questions about this Show Cause Notice please contact Senior Investigator Tanya Masterman on email Tanya.Masterman@act.gov.au.

Yours sincerely



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

7 April 2022