



██████████  
Nominated Supervisor  
Wonderschool (Woden) Pty Limited  
RE: Wonderschool (Woden) Pty Limited  
Email: ██████████

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 at Wonderschool (Woden) Pty Limited SE-40020582 (the Service) operated by Wonderschool (Woden) Pty Limited PR-40023578 (the Provider).
3. Investigation of suspected offences is related to allegations that an educator at the Service subjected children to inappropriate interactions, including instances of inappropriate discipline, between October 2021 and March 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 166 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.

### **Background**

9. On 8 March 2022, the Authority received a notification from the Provider regarding allegations of Ms [REDACTED] interactions with children being inclusive of inappropriate physical and verbal interactions. Refer Attachment A for documentation relevant to the notification.
10. 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 166 and 167 of the *Law*.

### **Allegation One – Inappropriate Discipline and Harms.**

11. It is alleged that, on between October 2021 and March 2022, you, in the role of Nominated Supervisor, did not ensure that children enrolled at the Service were not subjected to discipline in appropriate in the circumstances, in contravention of section 166(2)(b) of the *Law*, as follows:
  - a) On 15 November 2021 [REDACTED] grabbed a child, known to be [REDACTED] forcefully by his upper arm and yelled at him as he was not doing as you had asked him in relation to using his “walking feet”.
  - b) On an unknown date, Ms [REDACTED] restrained a child, known as [REDACTED] for the purpose of forcing him to lay down and remain in a lying position.
  - c) On an unknown date, Ms [REDACTED] threatened a child, known to be [REDACTED] as a disciplinary tool to address [REDACTED] allegedly biting another child.
12. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour. Discipline that is inappropriate within the meaning of section 166 of the *Law* includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Examples include yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.

### **Legislation Relevant to Allegation One**

13. The following provisions of the *Law* and *Regulations* are relevant to Allegation One:

#### **Section 166(2) of the *Law* – Offence to use inappropriate discipline**

A nominated supervisor of an education and care service must ensure that no child being educated and cared for by the service is subjected to-

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Penalty: \$10 000

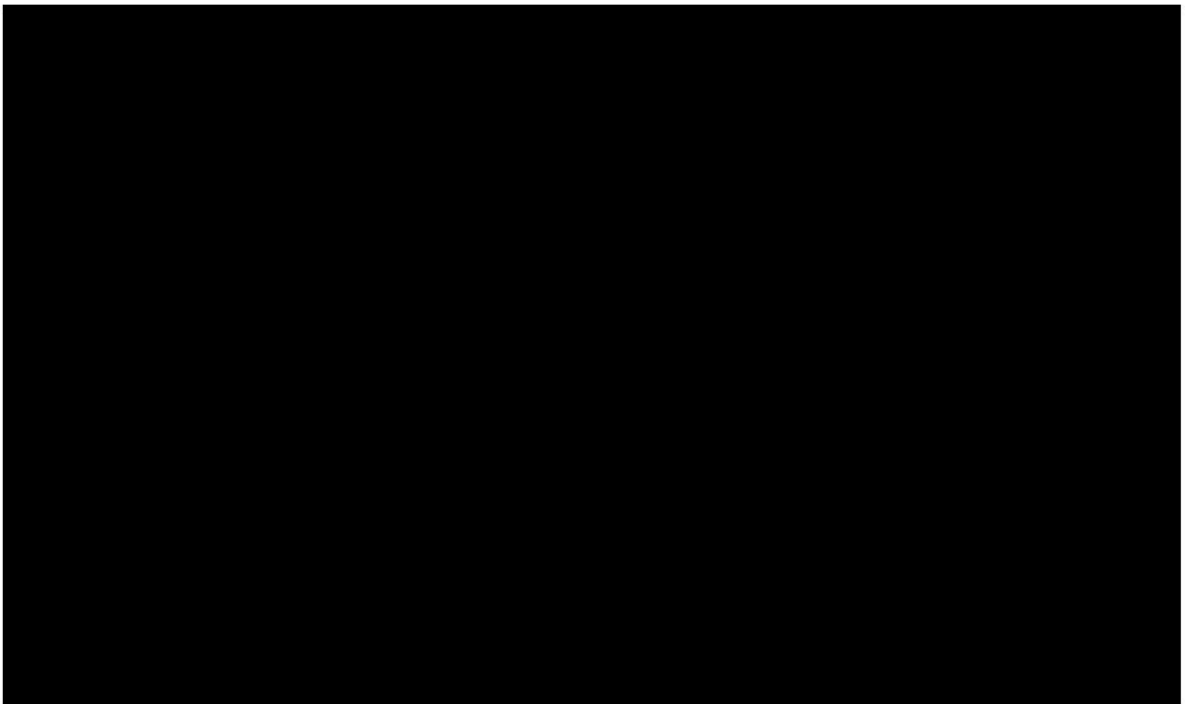
#### **Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards**

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.

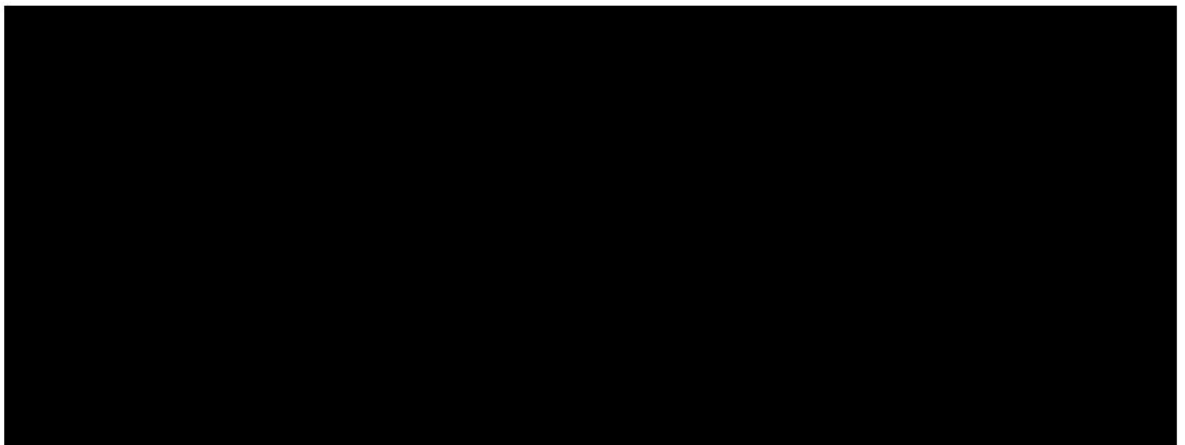
Penalty: \$10 000

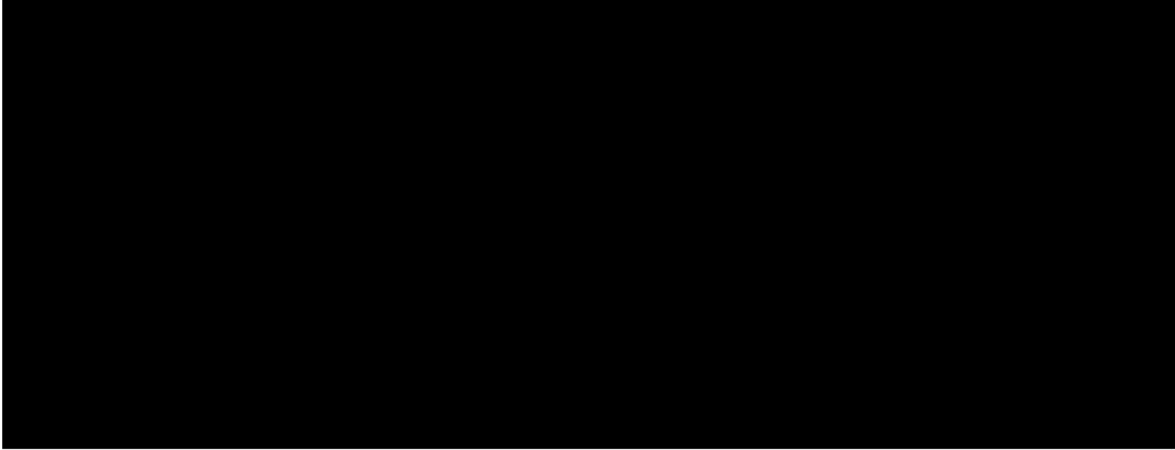
Evidence Relevant to Allegation One

14. Information furnished by the Provider identifies you as the Nominated Supervisor of the Service. Refer Attachment B.
15. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the *Law*. Documents produced by the Provider included records of the Provider's investigation and outcomes. Refer Attachment C.
16. As part of the investigation, the Authority obtained statements from witnesses, relevant excerpts from which are included below. 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.
17. Relevant extracts from Witness A 's statement are:

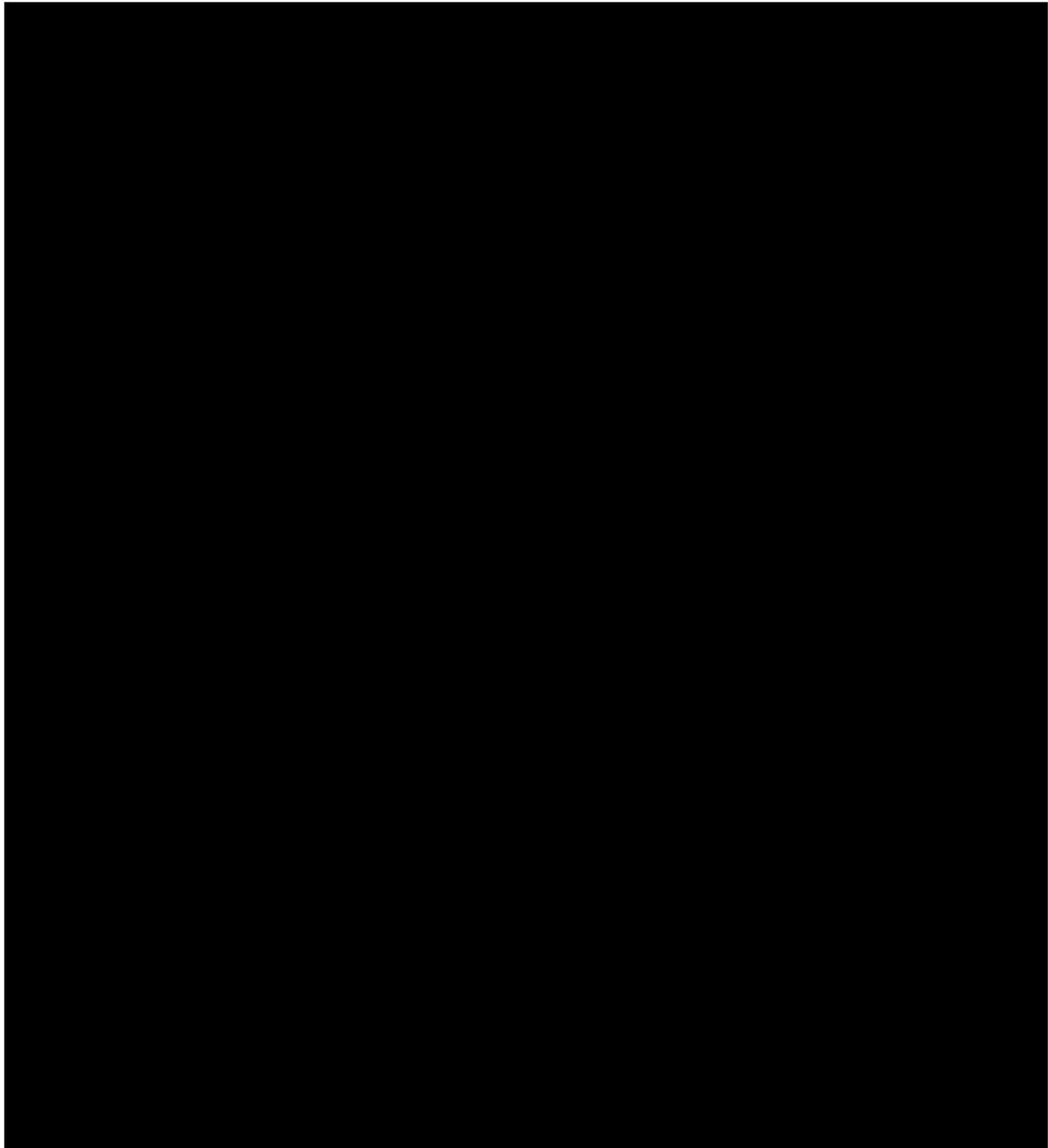


18. Relevant extracts from Witness B's statement are:





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



- [REDACTED]
20. The Authority's view is that ensuring children are not subjected to inappropriate discipline is a reasonable precaution to take to protect children from harm and from hazards likely to cause injury. Accordingly, a contravention of section 166(2)(b) results in a subsequent offence under section 167(2) of the *Law*.

#### Contraventions Supported by Allegation One

21. Evidence gathered appears to support contraventions of sections 166(2)(b) and 167(2) of the *Law*.

#### Allegation Two – Inappropriate Interactions and Harms

22. It is alleged that, between October 2021 and March 2022, you, as the Nominated Supervisor, failed to take every reasonable precaution to protect children from harm or hazards likely to cause injury, in that [REDACTED] was permitted to work directly with children without adequate strategies in place to ensure interactions were appropriate to guide behaviours in a positive way or provide encouragement toward acceptable behaviour, which did not meet the requirements of Regulation 155.
23. Although Regulation 155 is an obligation imposed upon the Provider, significant non-compliance with Regulation 155 may support an offence under section 167 for a nominated supervisor. The Authority's view in this instance is that, if the allegation is substantiated, an offence under section 167(2) would be supported.

#### Legislation 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

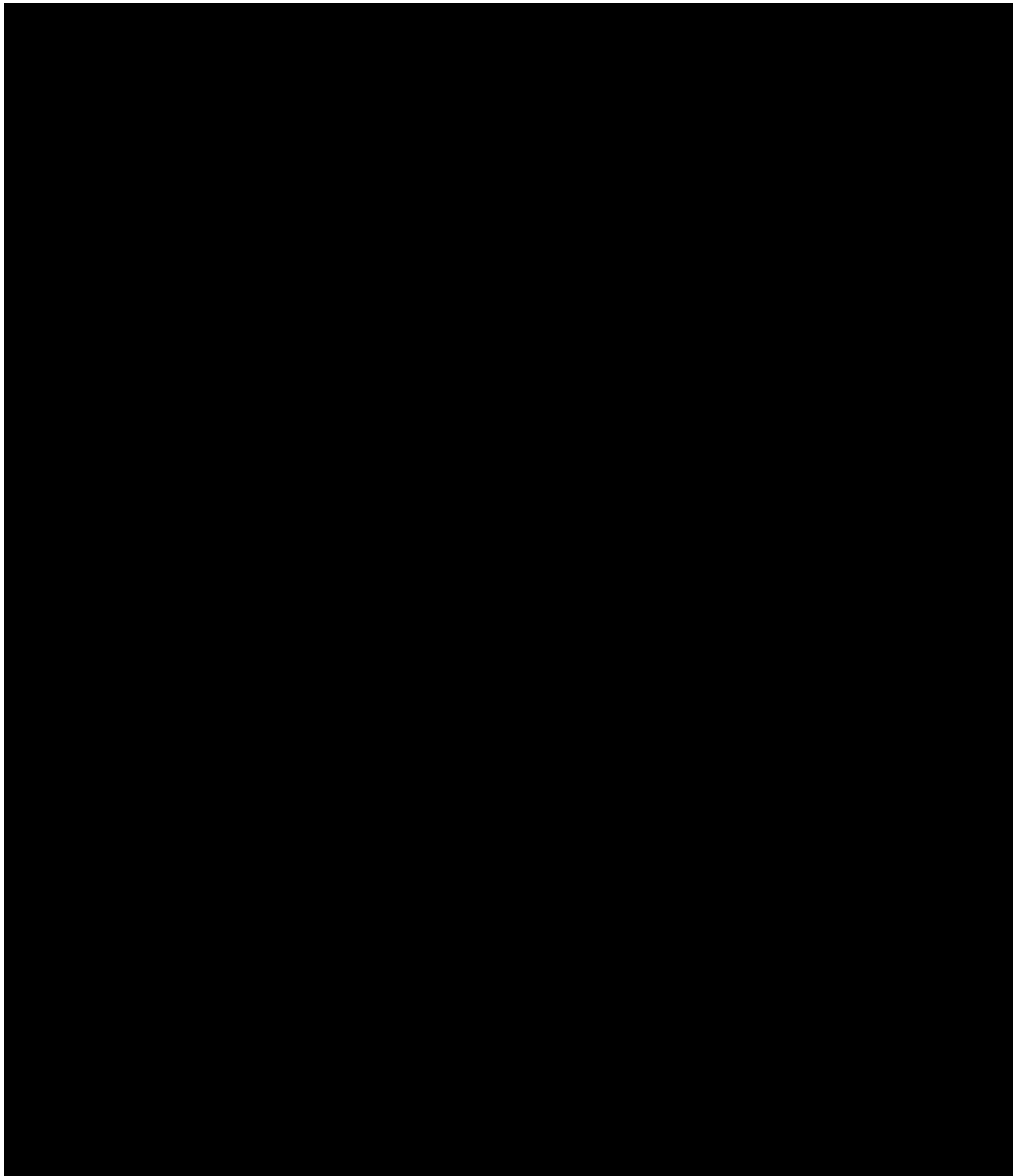
##### **Regulation 155 – Interactions with children**


An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that –

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

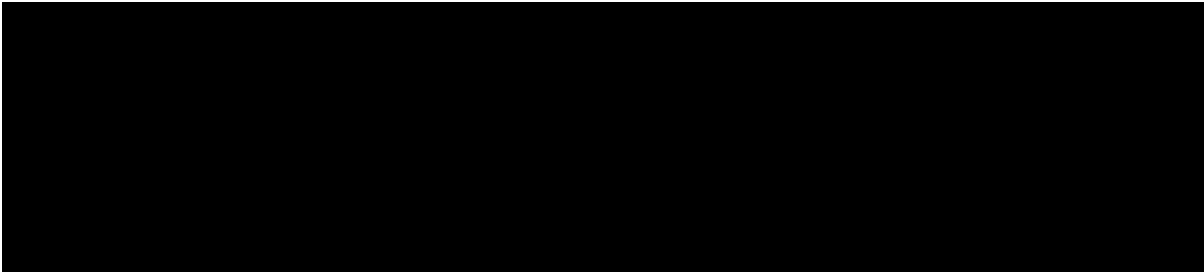
Evidence Relevant to Allegation Two

24. As part of the investigation, the Authority obtained documents from the Provider, exercising powers under section 215 of the Law. Documents produced by the Provider included records of the Provider's investigation and outcomes. Refer Attachment C.
25. As mentioned, additional evidence was obtained during the investigation from witnesses, utilising powers under section 215 of the Law, imposing obligations to attend and provide evidence.
26. Relevant extracts from Witness A's statement are:





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



Contravention supported by Allegation Two

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

**Potential Compliance Action**

29. 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.
30. Relevant legislation for enforceable undertakings and partial prohibition appears below.
31. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
32. 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. 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**

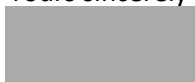
33. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
34. At Attachment D 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 [janine.fairburn@act.gov.au](mailto:janine.fairburn@act.gov.au) or by post to

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

### **Caution**

35. 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*.
36. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
37. 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.
38. 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>.
39. 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>
40. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn via email at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours sincerely



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

31 August 2022