

Ms [REDACTED]
Person with Management and Control
Wonderschool (Woden) Pty Limited
RE: Wonderschool (Woden) Pty Limited

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 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, the Provider did not ensure that children enrolled at the Service were not subjected to discipline in appropriate in the circumstances, in contravention of section 166(1)(b) of the *Law*, as follows:
 - a) On 15 November 2021 Ms [REDACTED] grabbed a child, known to be [REDACTED] forcefully by his upper arm and yelled at him as he was not doing as had been asked of 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(1) of the *Law* – Offence to use inappropriate discipline

The approved provider 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

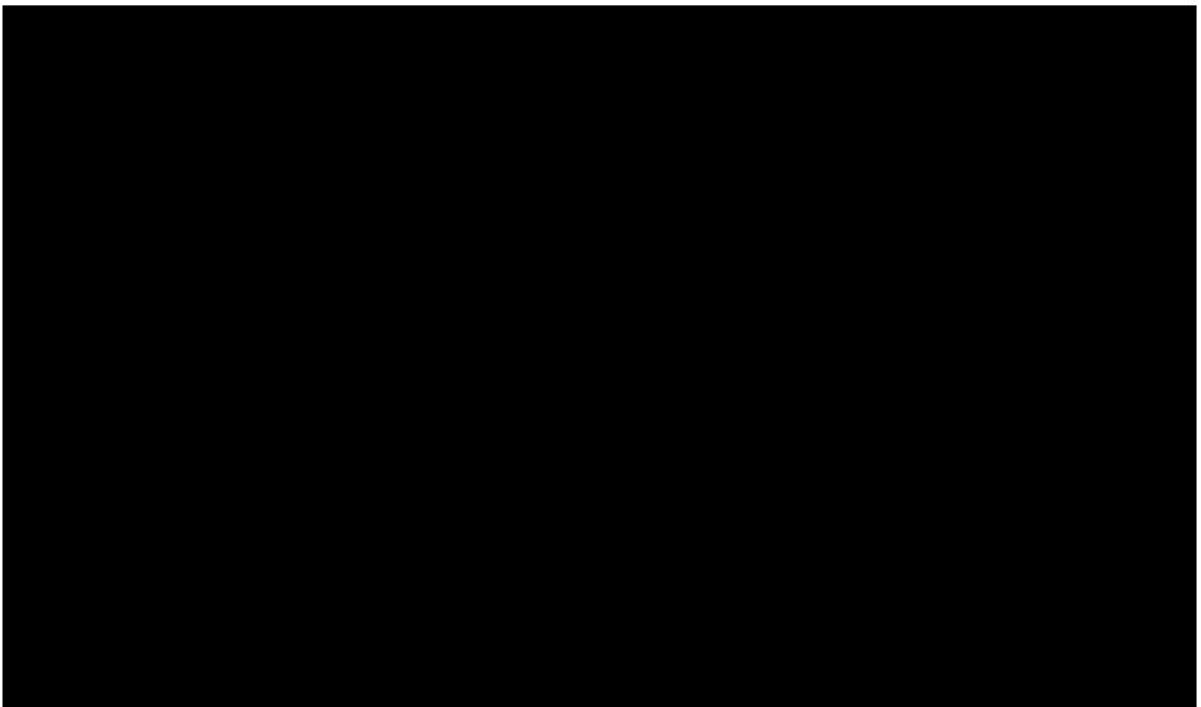
Section 167(1) of the *Law* - Offence relating to protection of children from harm and hazards

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.

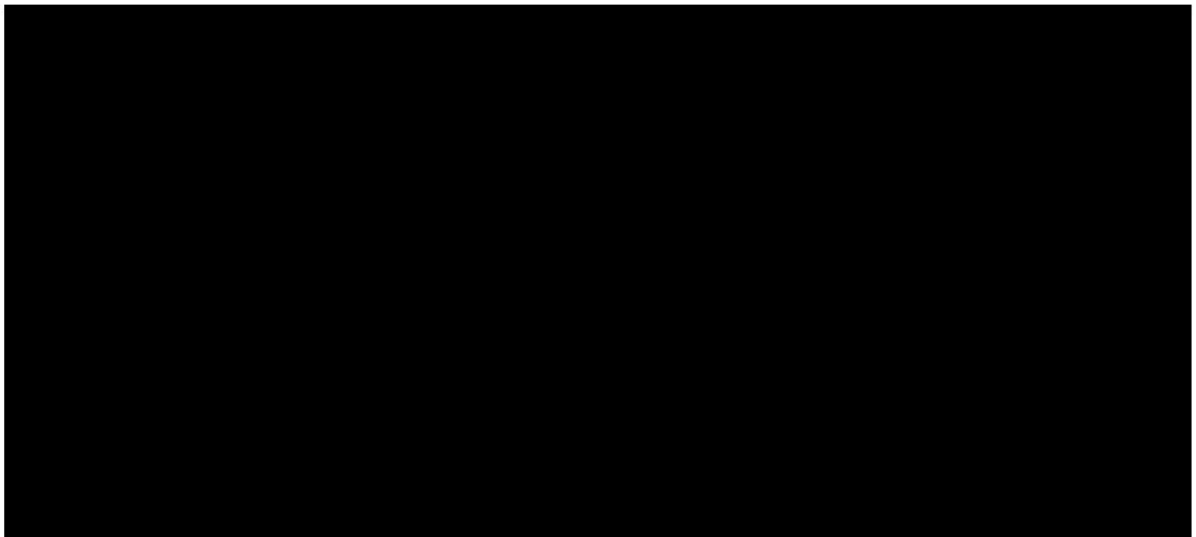
Penalty: \$10 000

Evidence Relevant to Allegation One

14. 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 B.
15. 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.
16. Relevant extracts from Witness A's statement are:

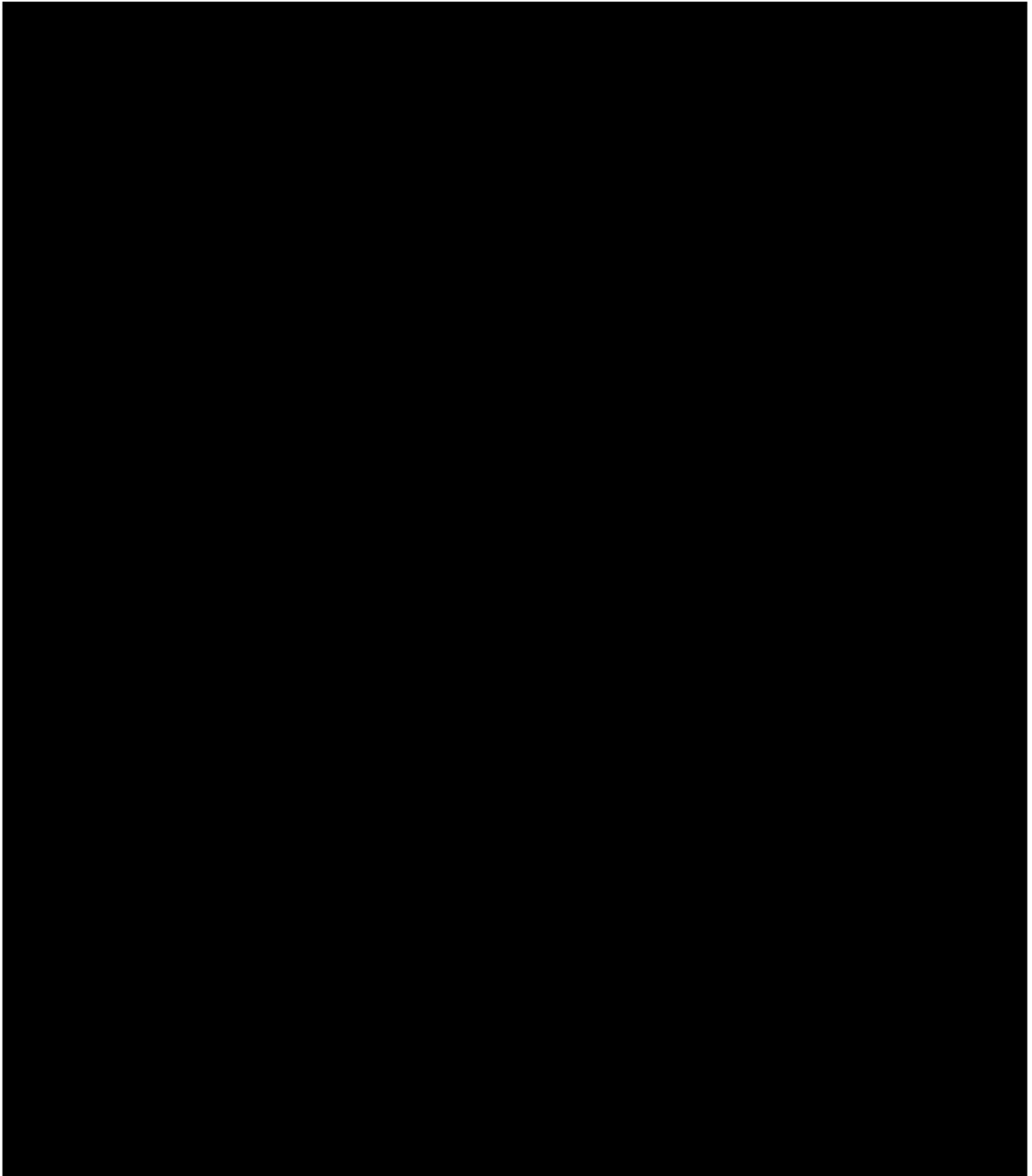


17. Relevant extracts from Witness B's statement are:





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



19. 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(1)(b) results in a subsequent offence under section 167(1) of the *Law*.

Contraventions Supported by Allegation One

20. Evidence gathered appears to support contraventions of sections 166(1)(b) and 167(1) of the *Law*.

Allegation Two – Inappropriate Interactions and Harms

21. It is alleged that, between October 2021 and March 2022, the Provider 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.
22. The Authority's view in this instance is that, if the allegation is substantiated, an offence under section 167(1) would be supported.

Legislation 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

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 –

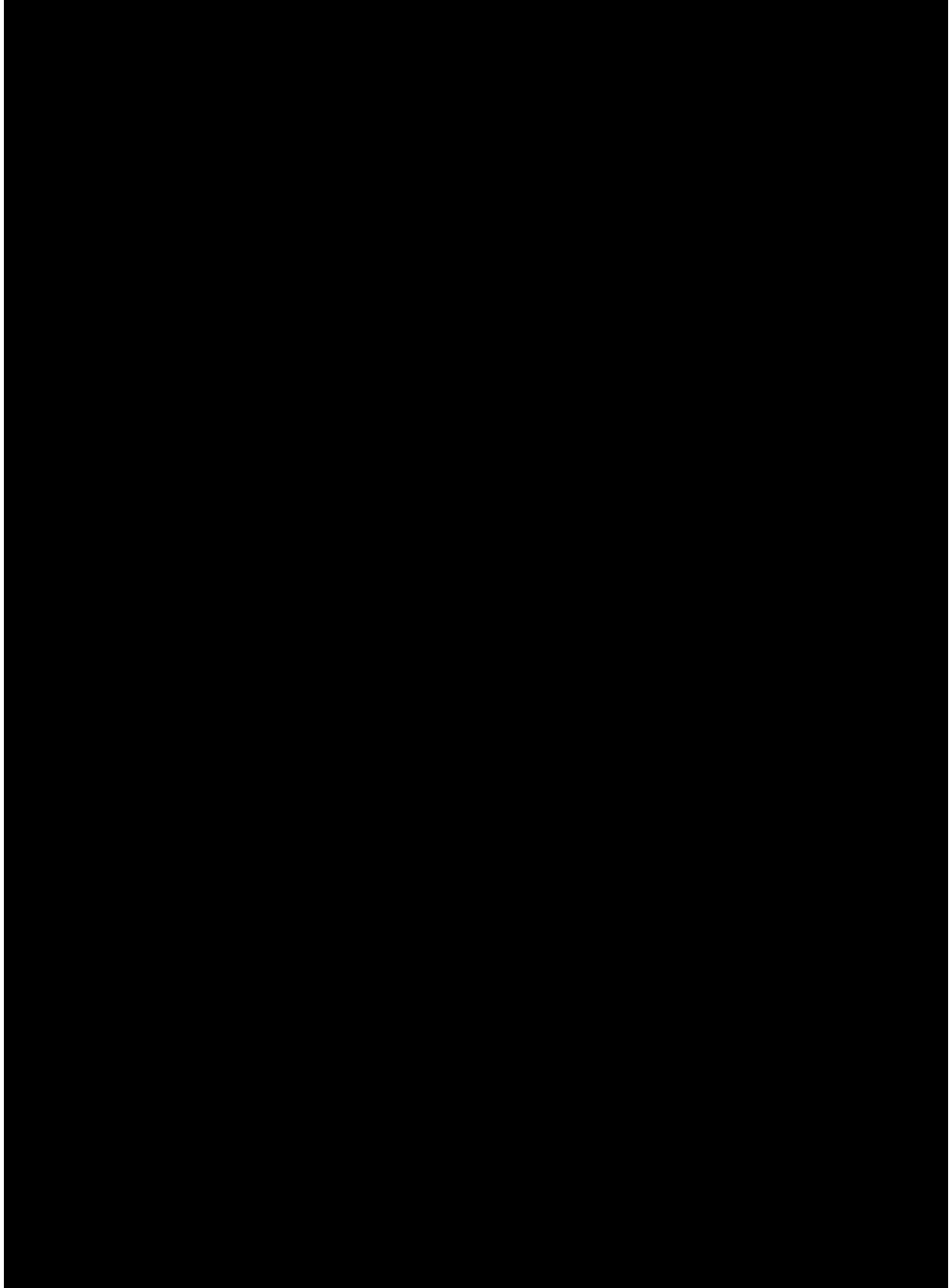
- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement 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

23. 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 B](#).

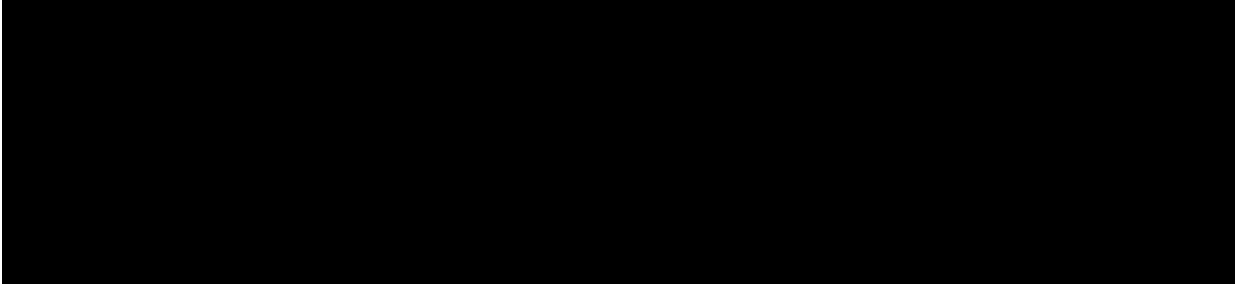
24. As mentioned, additional evidence was obtained during the investigation from witnesses, utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence.

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





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



Contravention supported by Allegation Two

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

Potential Compliance Action

28. 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;
or
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
 - d. Conditions on Service Approval under section 55 of the *Law*.
29. 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. 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.
30. 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.

Right of response

31. 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.
32. 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 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

33. 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*.
34. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
35. 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.
36. The *Law* applies to you as an approved provider and to any service the approved provider operates. 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>.
37. 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>
38. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn via email at Janine.fairburn@act.gov.au.

Yours sincerely



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

31 August 2022