

[REDACTED]
[REDACTED]
[REDACTED]
RE: Wonderschool Woden

Email: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Potential Compliance Action (including Prohibition)

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. As you may be aware, the Authority is the regulator of education and care services in the ACT and is responsible for monitoring and enforcing compliance with the *Education and Care Services National Law (ACT)* (the *Law*). One of the Authority’s roles is to investigate suspected offences under the *Law*.
2. Authorised Officers are currently investigating an allegation that you subjected children to inappropriate interactions, including instances of inappropriate discipline, between October 2021 and March 2022, whilst employed as an educator at Wonderschool Woden SE-40020582 (the Service) operated by Wonderschool (Woden) Pty Limited PR-40023578 (the Provider).
3. Web addresses to the *Education and Care Services National Law (ACT)* (the *Law*), and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
4. The Authority has 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 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 alleged conduct may constitute inappropriate discipline, which is an offence under section 166(3) of the *Law*. Other inappropriate interactions with children, although not meeting the threshold of suspected inappropriate discipline, are relevant to a consideration of risk to children.
7. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour. There does not need to be intent to cause harm, and that is not being suggested by the Authority. 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.

8. If, after considering all available evidence, the Authority finds an offence has occurred, it will need to consider whether compliance action is required. 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.
9. However, the Authority's primary consideration must be to ensure the health, safety and wellbeing of children being educated and cared for, which is the first objective of the National Quality Framework in section 3(2)(a) of the *Law*. Possible compliance actions appear at the end of this Notice.

Background

10. On 8 March 2022, the Authority received a notification from the Provider regarding allegations of your interactions with children being inclusive of inappropriate physical and verbal interactions. The *Law* required the Provider to notify the Authority of the matters raised.
11. Within the notification, the Provider advised that it was investigating the concerns raised about your interactions with children, and that you had been stood down whilst that investigation was ongoing.
12. Due to the risk of harm to children when subjected to inappropriate discipline or interactions, the Authority determined to investigate suspected offences.

Allegation of Inappropriate Discipline

13. It is alleged that, between October 2021 and March 2022, you inappropriately disciplined children, in contravention of section 166(3)(b) of the *Law*, as follows:
 - a) On 15 November 2021 you 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, you 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, you threatened a child, known to be [REDACTED] as a disciplinary tool to address [REDACTED] allegedly biting another child.

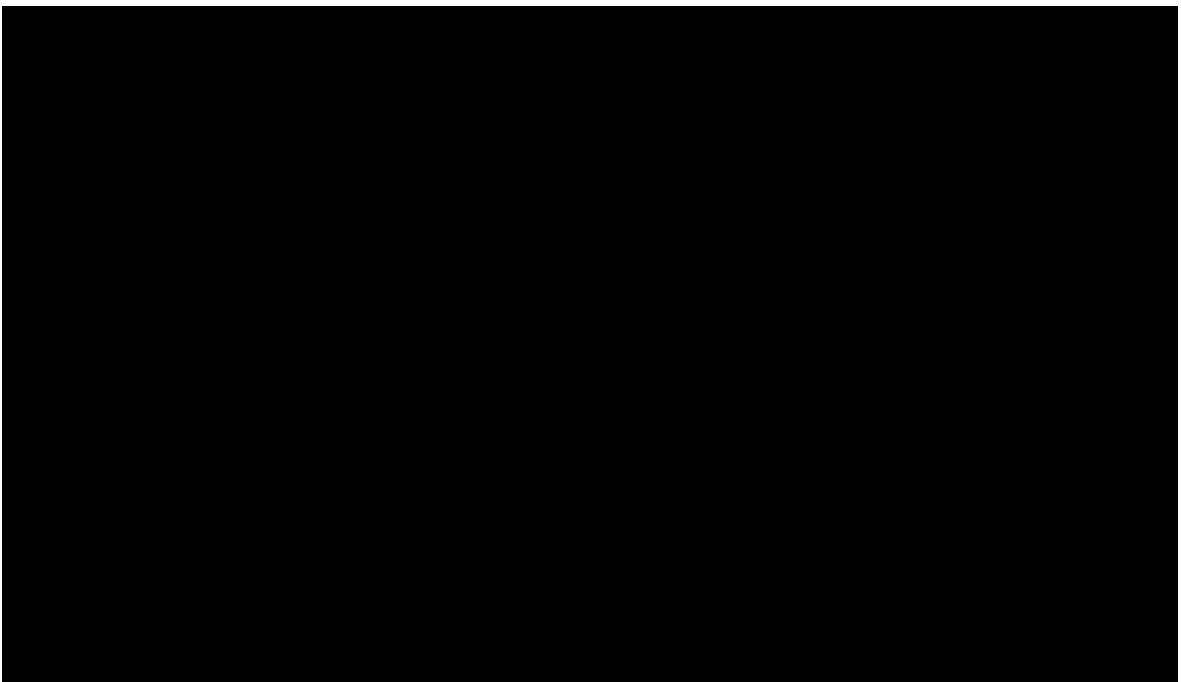
Evidence relevant to Allegation

14. Evidence relevant to the Allegation obtained under compulsory notice from the Provider included:
 - a. Correspondence between the Provider and you raising allegations of inappropriate conduct by you towards children via the Provider's internal investigation;

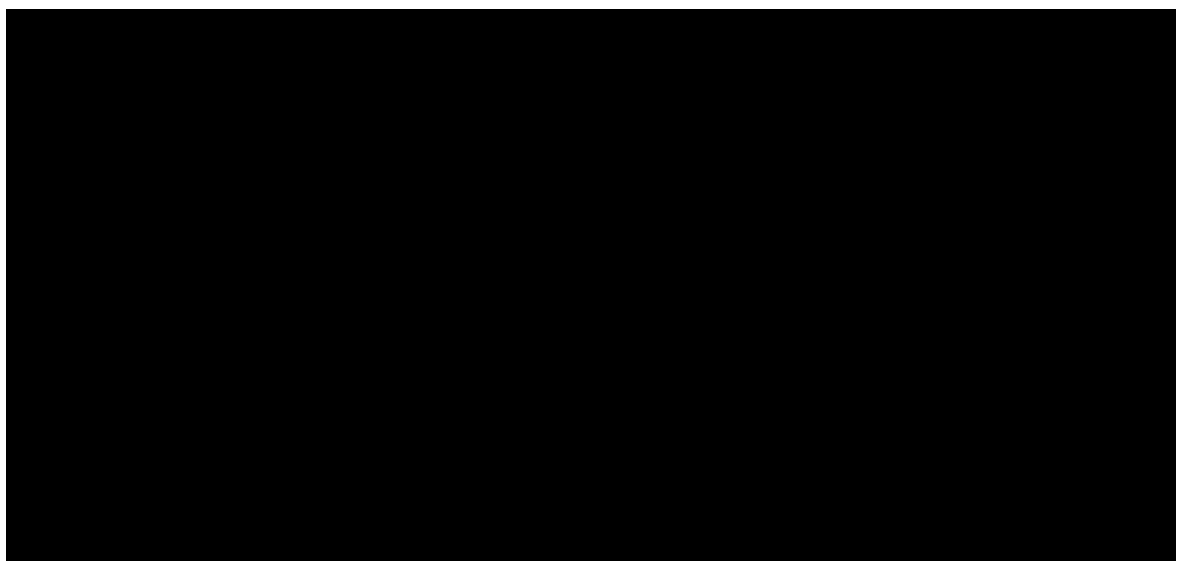
- b. Notes of your response to some the allegation as well as an audio-visual recording of an interview undertaken between yourself and delegates of the Provider on 24 March 2022.

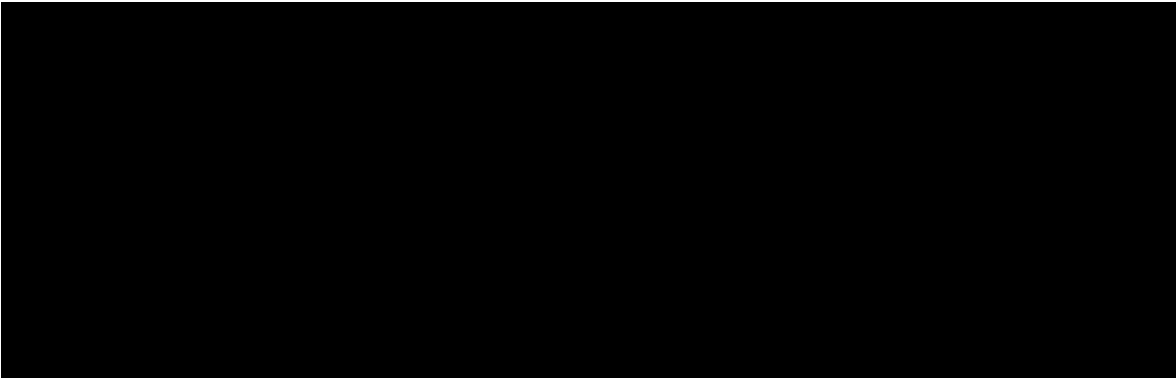
Refer Attachment A for a copy of relevant information obtained from the Provider. A copy of the audio-visual recorded meeting of 24 March 2022 can be provided to you upon request if you have already not obtained a copy via the Provider's internal process.

- 15. During the investigation, the Authority obtained further statements from witnesses, relevant extracts from which appear below, with information redacted where not required for procedural fairness purposes. Please note that all witness statements were obtained exercising a compel power under section 215 of the Law, which is permissible to gather relevant information to investigate suspected offences under the Law.
- 16. Relevant extracts from Witness A's statement are:

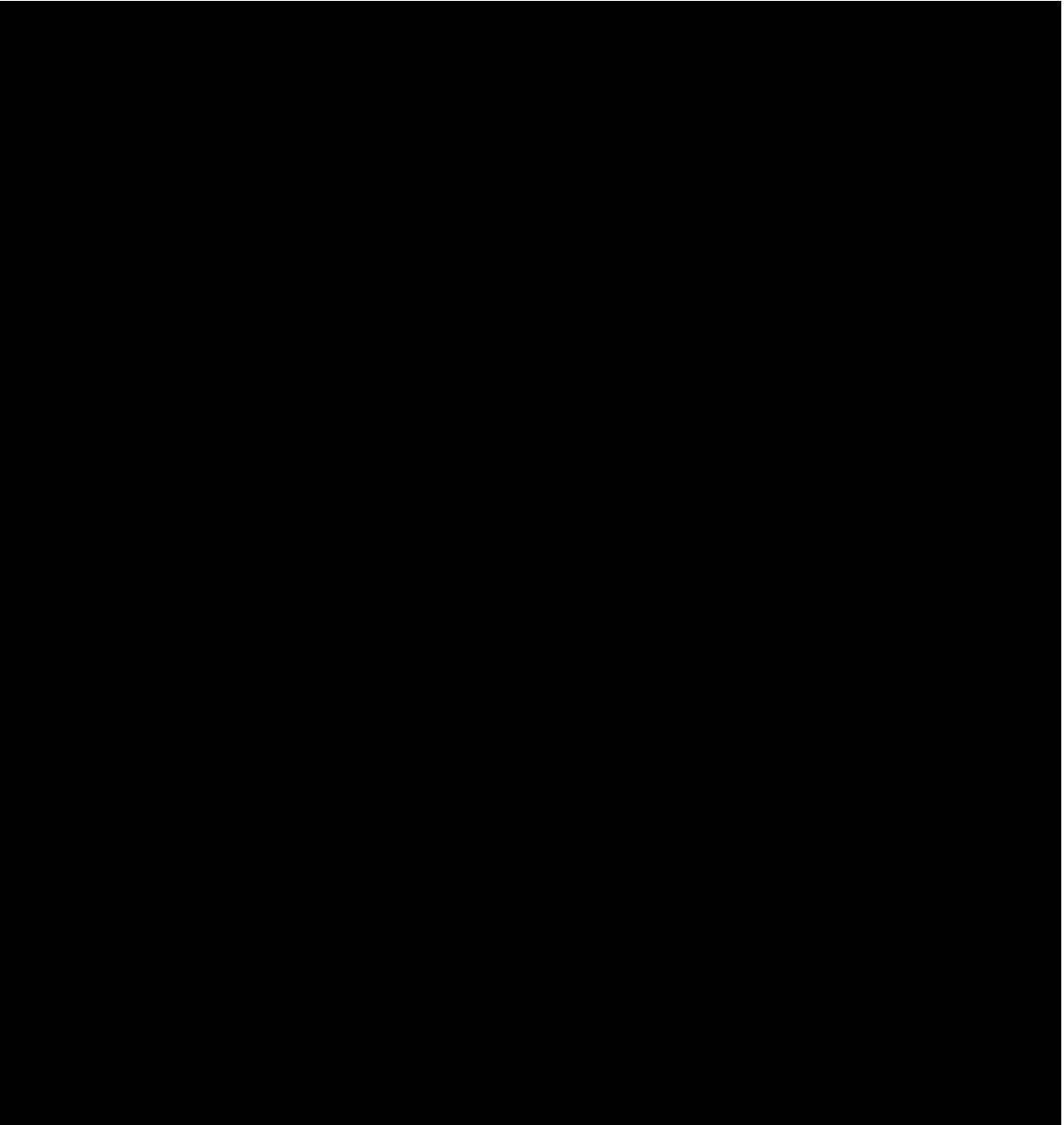


- 17. Relevant extracts from Witness B's statement are:





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



Contravention Supported by Evidence

19. The evidence currently available to the Authority relevant to the Allegation is sufficient to support the following offence under the *Law*:

Section 166(3) – Offence to Use Inappropriate Discipline

- (3) A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to-
- (a) any form of corporal punishment; or
 - (b) any discipline that is unreasonable in the circumstances.

Allegations of Inappropriate Interactions

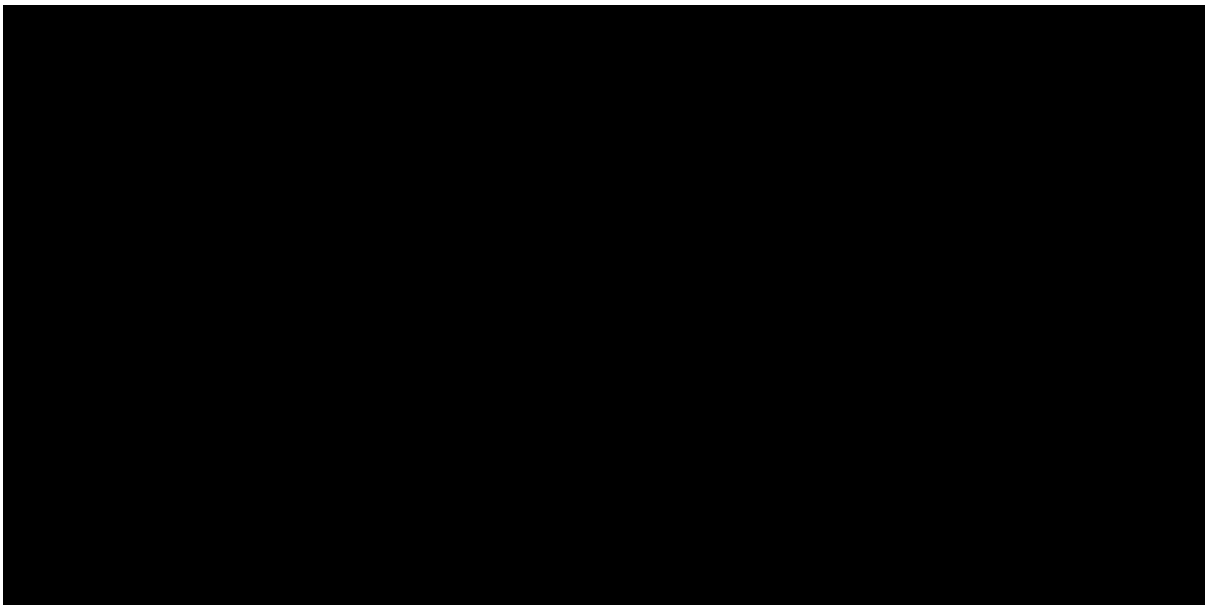
20. It is alleged that, between October 2021 and March 2022, on multiple occasions, you inappropriately interacted with children enrolled at the Service, by not guiding behaviours in a positive way or providing encouragement toward acceptable behaviour.

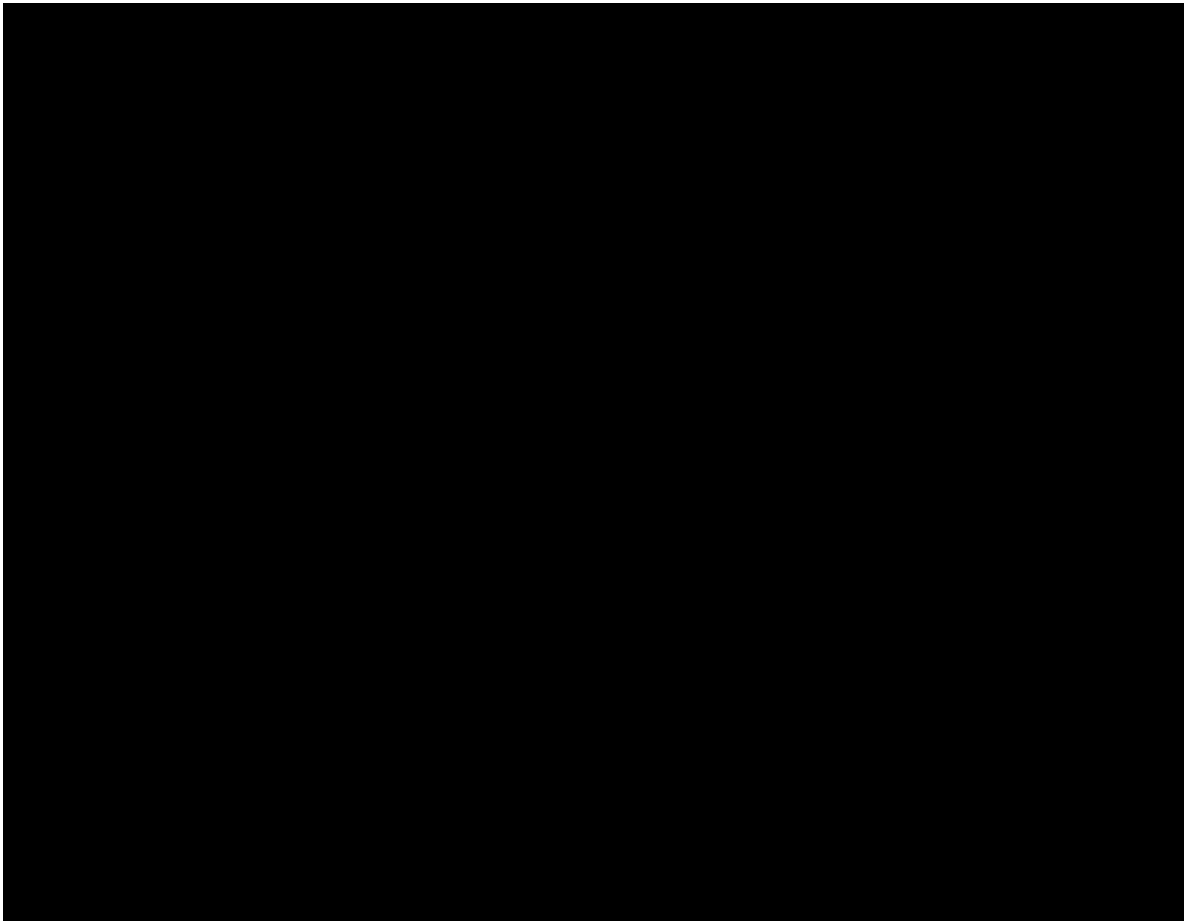
Evidence relevant to Allegation

21. Evidence relevant to the Allegation obtained under compulsory notice from the Provider included:
- a. Correspondence between the Provider and you raising allegations of inappropriate conduct by you towards children via the Provider’s internal investigation;
 - b. Notes of your response to some the allegation as well as an audio-visual recording of an interview undertaken between yourself and delegates of the Provider on 24 March 2022.

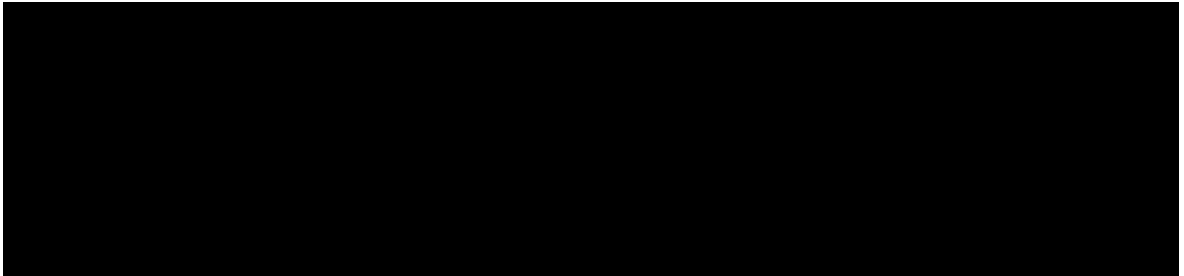
Refer Attachment A for a copy of relevant information obtained from the Provider. A copy of the audio-visual recorded meeting of 24 March 2022 can be provided to you upon request if you have already not obtained a copy via the Provider’s internal process.

22. Relevant information was also obtained from witness statements taken by the Authority under section 215 of the *Law*, relevant extracts from which appear below, with personal information redacted where not required for procedural fairness purposes.
23. Relevant excerpts from Witness A’s statement are:





24. Relevant excerpts from Witness C's statement are:



25. Although the evidence in paragraphs 20 through 23 above may not support additional offences of inappropriate discipline, it indicates a concerning lack of emotional regulation in the presence of children. The alleged behaviour interactions have potential to cause distress to children and pose a risk of harm to their safety, health and wellbeing. All interactions with children must meet the requirements of *Regulation 155*, which states:

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.

Potential Compliance Actions

26. Should the offence be substantiated on the balance of probabilities and/or if the Authority is satisfied that there is an unacceptable risk of harm to children if you are permitted to provide education and care, the Authority will need to consider whether any compliance action is required. As well as administrative action such as a formal Caution Letter, the potential statutory compliance actions are an enforceable undertaking or prohibition, as set out below:

Section 179A of the Law – Enforceable undertaking

- (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.
- (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.

Section 182 of the Law – Grounds for giving prohibition notice

- (2) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed –
 - (a) to remain on the education and care service premises; or
 - (b) to provide education and care to children.
- (3) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following –
 - (a) an approved provider;
 - (b) a nominated supervisor;
 - (c) an educator;
 - (d) a family day care educator;
 - (e) an employee;
 - (f) a contractor;
 - (g) a volunteer;

- (h) a person who was formerly a person referred to in paragraphs (a) to (g) in relation to the approved education and care service –
or in any other capacity

Section 183 – Show cause notice to be given before prohibition notice

- (1) Before giving a prohibition notice, the Regulatory Authority must give the person a notice (a ***show cause notice***) –
 - (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
 - (b) stating the reasons for the proposed prohibition; and
 - (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

Effect of an Enforceable Undertaking

- 27. An Enforceable Undertaking is a formal “promise” to the Authority to do or not do certain things. Terms vary, but examples of requirements include matters such as:
 - a. only working with children under supervision;
 - b. doing some additional training to improve your skills as an educator;
 - c. providing evidence from a professional (such as a psychologist or psychiatrist) relating to improved emotional regulation and stress management;
 - d. keeping the Authority advised of your workplace;
 - e. having an approved mentor.
- 28. An Enforceable Undertaking is a flexible way to permit educators to continue working in early education and care, whilst still ensuring compliance with the *Law* and *Regulations*, and may be appropriate depending on the level of risk to children.
- 29. If you offer an enforceable undertaking and the Authority accepts it, failure to comply with any of its terms after acceptance allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *Law* to enforce the undertaking.

Effect of a Prohibition Notice

- 30. If, after considering all available evidence and any submission you wish to make, the Authority decides to issue a prohibition notice, while the prohibition notice is in force you must not:
 - (a) provide education and care to children for an education and care service; or
 - (b) be engaged as an educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or
 - (c) carry out any other activity relating to education and care services.

Right of response

31. You have a right to respond to the allegations set out in this notice.
32. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if compliance action should be taken. If you need additional time, please direct a request with reasons to the contact officer.
33. At Attachment B to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.
34. If you respond in writing, please direct your written submission via email to Authorised Officer Janine Fairburn at janine.fairburn@act.gov.au or by post to:

Janine Fairburn – Authorised Officer
Children's Education and Care Assurance
ACT Education Directorate
GPO Box 158, CANBERRA ACT 2601

Caution

35. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.

Legislation

36. The *Law* applies to you as an educator and to any service you may be employed at.
37. 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>.
38. 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>
39. Should you have any questions about this Show Cause Notice please contact Janine Fairburn by email at janine.fairburn@act.gov.au.

Yours sincerely,



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

31 August 2022