



[REDACTED]

Nominated Supervisor

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 from are investigating suspected offences under the *Education and Care Services National Law (ACT) (the Law)* relating to the operation of Wonderschool (Woden) Pty Limited SE-40020582 (the Service) operated by Wonderschool (Woden) Pty Limited PR-40023578 (the Provider).
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 167(2) of the *Law*. 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*.

Grounds for issuing Show Cause Notice

8. The evidence obtained during the investigation support an offence under the *Law* within the area of failing to protect children by taking reasonable precautions. The Provider has submitted evidence that you were the nominated supervisor at the Service at the time alleged conduct occurred.
9. On 12 November 2021, the Authority received a Notification relating to the operation of the Service and in particular, allegations that an educator inappropriately interacted with a child. Refer Attachment A.
10. Specifically, the Notification advised that on 11 November 2021, a child, believed to be [REDACTED] had a broom forcibly removed from her grasp by an educator, Ms [REDACTED], and that the Provider was conducting an internal investigation.
11. On 25 November 2021, the Provider furnished documents requested by the Authority, inclusive of an electronic interview with the accused educator, Ms [REDACTED] during which she alleges a lack of support from the Provider to adequately guide challenging behaviours of particular children within the Preschool room.
12. Due the risk of children being exposed to harms and hazards as a result of inappropriate interactions arising from inadequate support and resourcing of educators in guiding behaviours of challenging children, the Authority determined to investigate.
13. The Authority is considering compliance action based on the evidence gathered that indicate contraventions of the *Law*. Specifically, evidence gives grounds to support the following allegation:

Allegation:

14. It is alleged that on 11 November 2021, you, as the Nominated Supervisor failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service, from harms and hazard likely to cause injury, in that educators in the Preschool room were not adequately resourced and supported to facilitate appropriate interactions when guiding challenging behaviours of children, believed to include [REDACTED] and [REDACTED] in contravention of section 167(2) of the *Law*.

Legislative Provisions Relevant to Allegation

Section 167(2) 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.

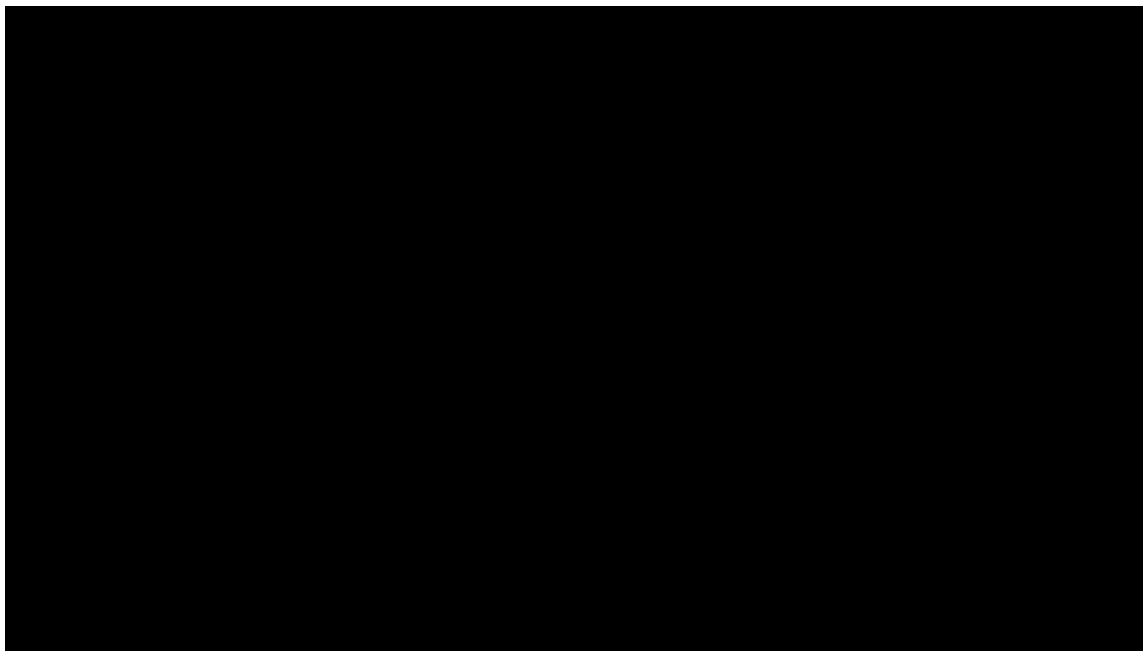
Penalty: \$10 000, in the case of an individual

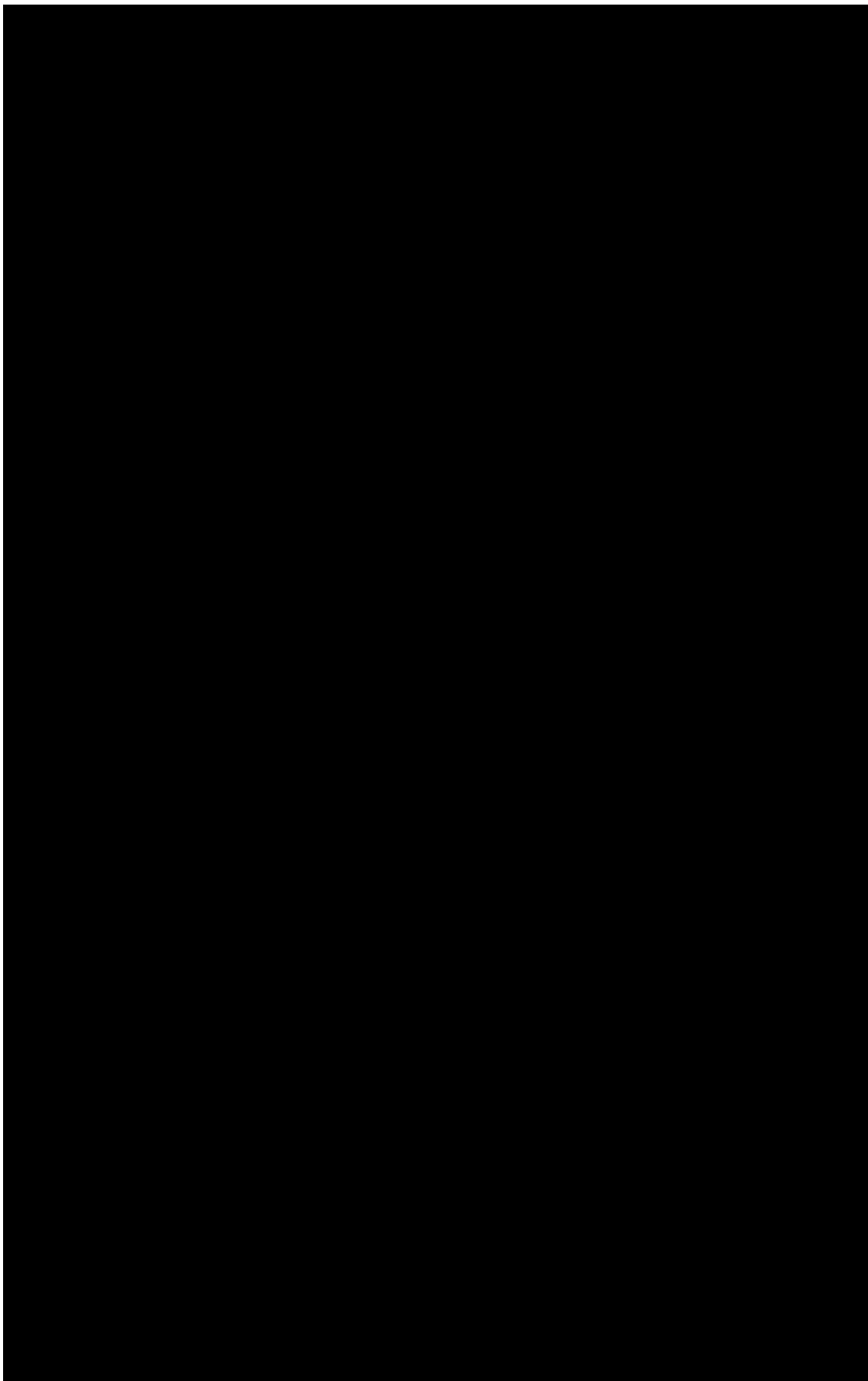
Evidence Relevant to the Allegation:

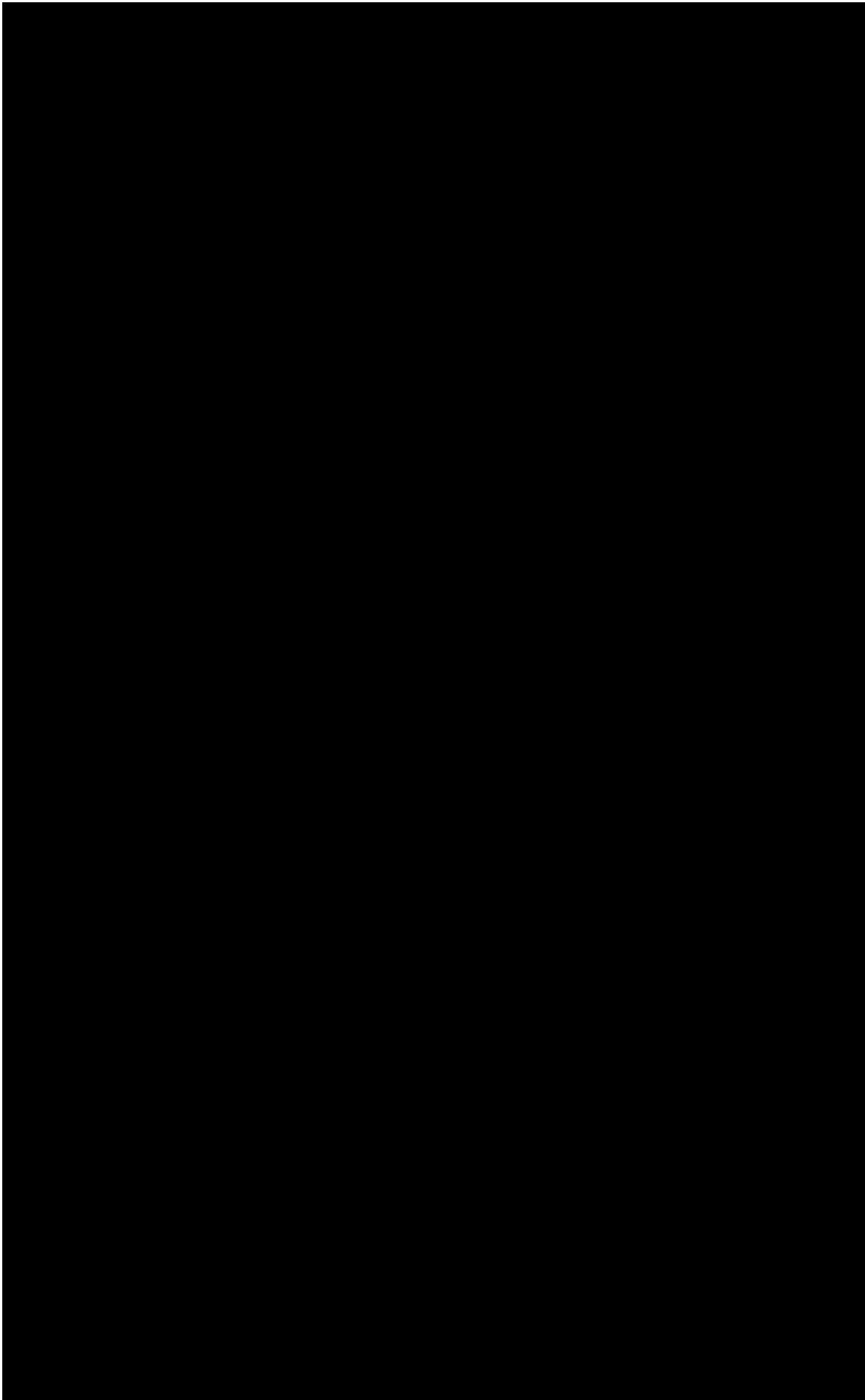
15. On 10 December 2021, a notice allowable under section 215 of the *Law* (215 Notice) was sent to the Provider requiring information and documentation to be forwarded to the Authority.
16. On 20 December 2021, the Provider responded to the 215 Notice with submission of the following information and prescribed records:
 - a) HR, Performance, Induction and Compliance files/folders for Ms [REDACTED]
 - b) HR, Induction and Compliance files/folders File Ms [REDACTED]
 - c) Copies of relevant Policies and Procedures.
 - d) Educators contact information, Educator qualification report and Responsible Person record.

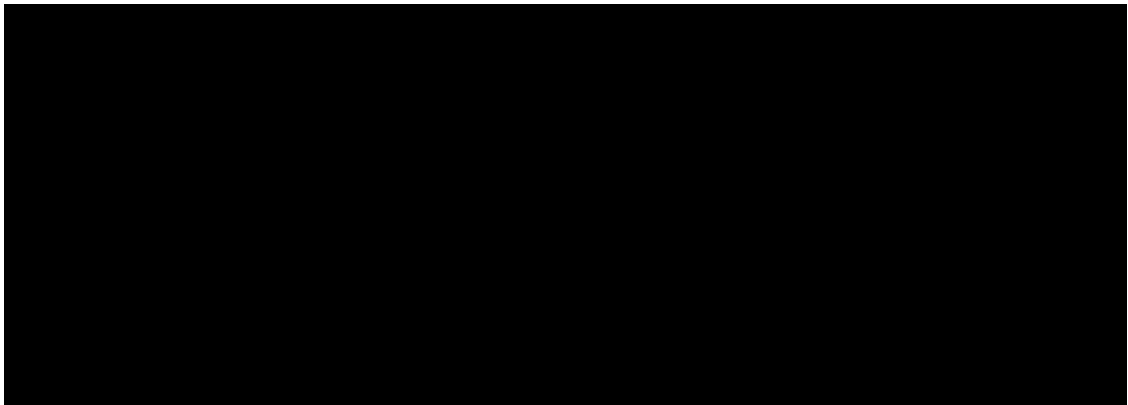
Refer to Attachment B-B1 for relevant documents obtained via s215 Notice.

17. From prescribed records supplied by the Provider, a ratio analysis was conducted for 11 November 2021, indicating that the Service was maintaining minimum regulated staffing arrangements. Refer to Attachment C.
18. Information furnished by the Provider identifies you as an additional Nominated Supervisor of the Service. Refer to Attachment D.
19. Utilising the information submitted by the Provider on 25 November 2021 (advised of in paragraph 11 of this Notice), the following relevant excerpts of the electronically recorded interview between the Provider and Ms [REDACTED] on 18 November 2022, were transcribed:

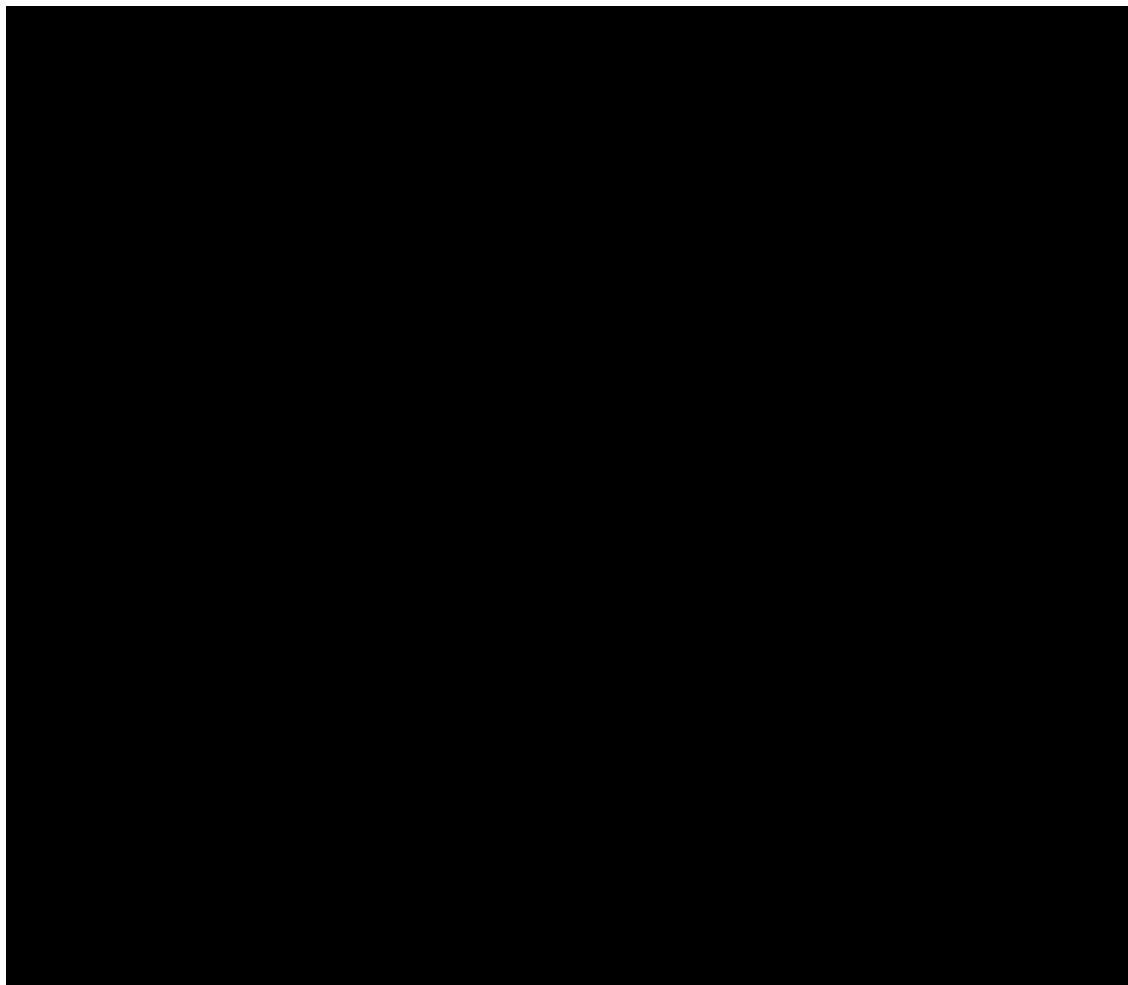


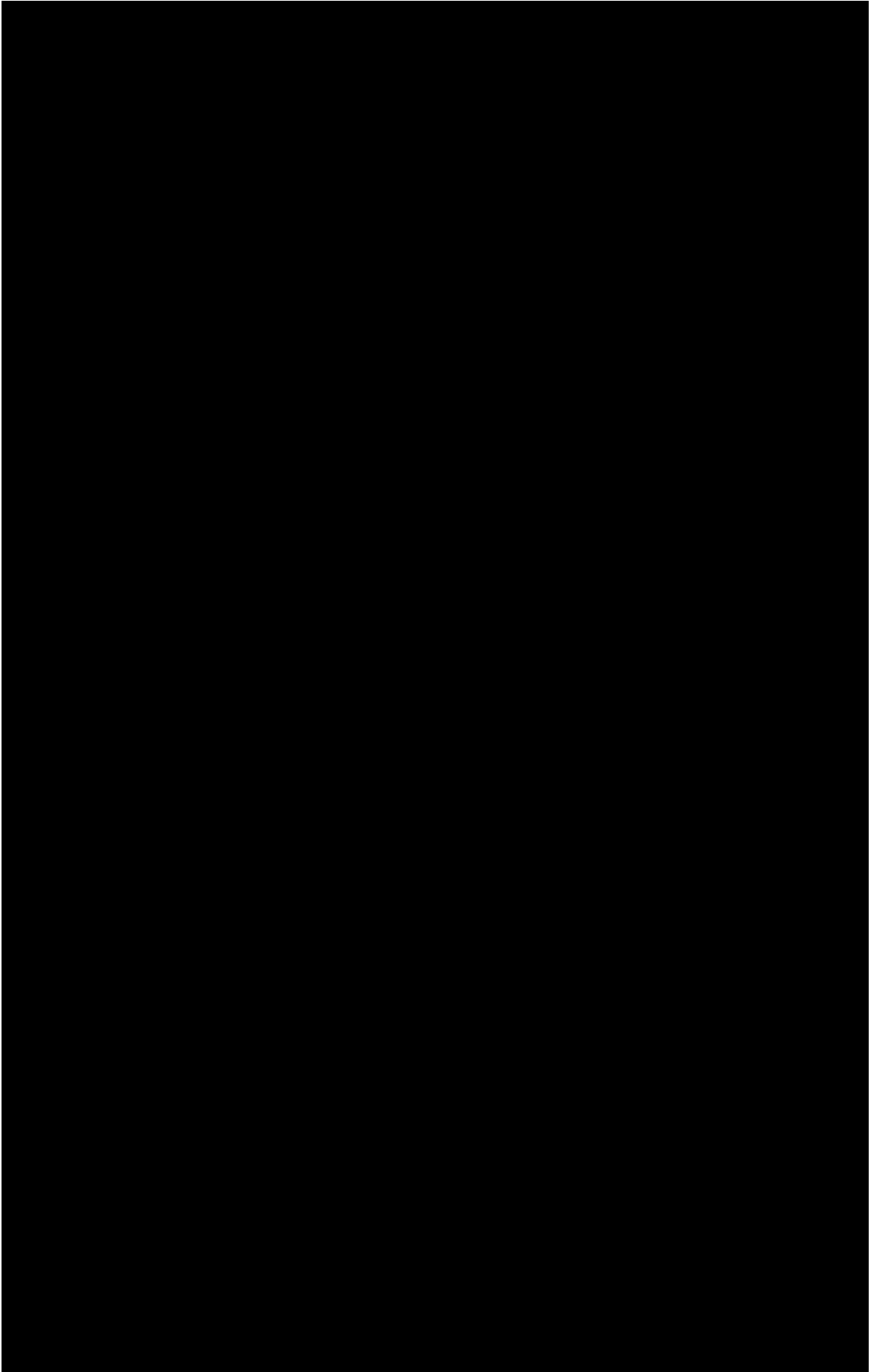






20. Refer relevant transcript excerpts from Video Meeting 18/11/2021 at Attachment E with full electronic recording available upon request.
21. During the investigation, the Authority also obtained evidence from a witness with relevant excerpts appearing below. Due to the specific circumstances of the allegation, it is likely the witness can be identified from the content of the excerpts. Please note that the statement was obtained using powers under section 215 of the *Law*, compelling the witness to provide relevant evidence to an Authorised Officer.
22. Evidence was also obtained from a witness with relevant excerpts from statement of Witness A appearing below:







Contraventions Supported by the Allegation

23. Evidence gathered appears to support the allegation, which supports a contravention of section 167(2) of the Law

Fitness and Propriety as Nominated Supervisor

24. 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.
25. 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. At minimum, fitness and propriety includes honesty, knowledge and ability.
26. 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*.
27. 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.
28. As Nominated Supervisor, you are responsible for the resource and skill requirements of educators in supporting the emotional, developmental, and physiological needs of children including those with challenging behaviours.
29. This evidence raises a concern about your ability to manage and supervise an education and care service.
30. 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

31. 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.
32. Relevant legislation for enforceable undertakings and partial prohibition appears below. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
33. 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

34. 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.
35. 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

36. 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*.
37. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal. 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>. 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 Senior Investigator Brian Cropper, on telephone (02) 62071104 or email brian.cropper@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

31May 2022